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ABSTRACT

The rapid decline in the number of farms operated by blacks in the United States, and the consequences of this decline on the conditions of black farmers are the focus of this report. Chapter 1 compares the rate of agricultural land loss from 1900 to 1978 among blacks and whites. Chapter 2 outlines historical conditions, such as racism, lack of institutional economic support, and possession of only marginal landholdings, that contributed to black land loss in the past. Chapter 3 discusses how these historical factors, together with current economic practices that favor large farm operations, have placed black farmers in a disadvantaged, noncompetitive position which threatens their occupational survival. Chapter 4 reviews programs of the U.S. Department of Agriculture's (USDA's) Farmers' Home Administration (FmHA) to help black farm operators to keep their land, and analyzes data on black participation in these programs in 1981. Chapter 5 examines USDA's civil rights enforcement activities and assesses their impact on FmHA's loan services to minorities. It is suggested that FmHA's potential to help farmers to work on their land has not been realized because of racial discrimination that civil rights enforcement in USDA does not effectively address. Recommendations for improving this situation are presented. (Author/MJL)

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The Decline of Black Farming in America

A Report of
the United States Commission
on Civil Rights

February 1982

ED222604

UD 022 564

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission:

Arthur S. Flemming, Chairman
Mary F. Berry, Vice Chairman
Stephen Horn
Blandina Cardenas Ramirez
Jill S. Ruckelshaus
Murray Saltzman

John Hope, III, Acting Staff Director

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C.
February 1982

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report examines problems confronting black farmers and the historical and current conditions--racial discrimination, lack of institutional economic support, commercial lending practices, commodity and income supports, and tax structures geared to benefit large farm operations, and others--that have contributed to the loss of black-operated farmland in the past, and threaten the survival of black-owned farms in this country today. It reviews the farm credit programs of the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA) because of its role as the principal public lending institution for this Nation's rural communities. Finally, the report evaluates civil rights policies and enforcement activities at various administrative levels within USDA and assesses their impact on loan services provided to black farmers in its farm credit programs.

The Commission finds that these FmHA credit programs have the capability to provide immediate direct assistance to black farmers to make their farms more viable and to prevent further loss of their lands. However, FmHA has not given adequate emphasis or priority to the crisis facing black farmers; thus, despite their disproportionate need, black farmers are not fully benefitting from FmHA loan programs. In some cases, FmHA may have hindered the efforts of black small farm operators to remain a viable force in agriculture. Furthermore, as the Commission has found in the past, USDA and FmHA have failed to integrate civil rights goals into program objectives and to use enforcement mechanisms to ensure that black farmers are provided equal opportunities in farm credit programs.

The Commission believes that its recommendations for improving civil rights enforcement within FmHA programs will address, at least partially, some of the factors contributing to the rapid decline of black-operated farms. We urge your consideration of the facts presented and ask for your leadership in ensuring implementation of the recommendations made.

Respectfully,

Arthur S. Flemming, Chairman
Mary F. Berry, Vice Chairman
Stephen Horn
Murray Saltzman
Jill S. Ruckelshaus
Blandina Cardenas Ramirez

John Hope, III
Acting Staff Director

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Chapter 1

Introduction: The Decline of Black-Operated Farms

> The earth is given as commonstock for man to labour and live on....
>
> The small landholders are the most precious part of a state.
>
> Thomas Jefferson

Only 57,271 farms are currently operated by blacks in the United States, according to the U.S. Bureau of the Census.[1] The historical roots that connect black farmers to the land make the imminent loss of their land tragically ironic. Twenty-five years after the Civil War, 60 percent of all employed blacks in the United States were farmers or farm laborers. At their peak number in 1920, there were 926,000 black-operated farms, comprising one-seventh of all farm operations.[2] By 1978, only 6.2 percent of that number remained.

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[1] U.S., Department of Commerce, Bureau of the Census, 1978 Census of Agriculture, vol. I, pt. 51, p. 209 (hereafter cited as 1978 Census of Agriculture). The census classifies farm operators as full owners, part owners (who operate leased land as well as their own farms) and tenants. In 1974, 66.9 percent of the black operators were full owners, 20.6 percent were part owners, and 12.5 percent were tenant farmers. 1974 Census of Agriculture, vol. II, pt. 51, p. I-88 (hereafter cited as 1974 Census of Agriculture) provides more detailed, though less accurate, data on black farmers than the 1978 Census of Agriculture.

While displacement from the land looms as a threat to all small farmers, land loss has occurred most severely among black farm operators. Almost 94 percent of the farms operated by blacks have been lost since 1920, while the number of white-operated farms declined 56.4 percent during the same period. Table 1.1 shows the diminishing numbers and the percentage decline of farms operated by blacks, as compared with whites, during this century.[3]

Moreover, the rate of land loss shows no sign of tapering off for blacks, even though it has slowed somewhat for white farmers. White land loss peaked at a rate of 28.8 percent between 1950 and 1959; during that period the rate of black land loss was almost double the white rate -- 51.3 percent. By 1978, the rate of loss for blacks increased to 57.3 percent, 2 1/2 times the rate of loss for whites. At this rate of loss, there will be virtually no blacks operating farms in this country by the end of the next decade.

The escalation of land values is such that black-owned land is

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[2] Calvin L. Beale, "The Negro in American Agriculture," reprinted by USDA from The American Negro Reference Book, ed. John P. Davis (1966), p. 170.

[3] Agricultural census data may be inaccurate. Moreover, comparing agricultural census data over time is problematic due to changes in the census definition of a farm as well as changes in the methodology used to perform the census count. Nonetheless, comparing the numbers of black farmers with the numbers of white farmers over time shows relative trends which appear to remain true even when adjusted for changes in definitions and methodology. For further information regarding the data, see explanations for table 1.1 and apps. A and B.

TABLE 1.1

Farms Operated by Blacks and Whites[a]

1900-1978

	Blacks	Percent change	Whites	Percent change
1978[b]	57,271	-57.3	2,398,726	-22.4
1969[c]	133,973	-50.8	3,089,885	- 9.6
1959	272,541	-51.3	3,419,672	-28.8
1950	559,980	-17.9	4,802,520	-10.7
1940	681,790	-22.8	5,378,913	+.09
1930	882,852	-4.6	5,373,703	- 2.3
1920	925,710	+3.6	5,499,707	+ 1.1
1910	893,377	+19.6	5,440,619	+ 9.5
1900	746,717		4,970,129	
Overall percentage loss between 1920-1978		-93.8%		-56.4%

---

a/ The term "farm" may include all types of farms, including family farms, corporations, cooperatives, prison farms, and grazing associations. Since the census' inception, the definition of a farm, based on agricultural sales and acreage, has changed frequently. See Appendix A for these definitions.

b/ For the 1978 Census of Agriculture, a farm was defined as "any place from which $1,000 or more of agricultural products were sold or normally would have been sold during the census year." According to the Census Bureau, this definition excluded 468,973 farm operators who would have been counted under the definition used in the 1969 Census of Agriculture. An estimated 27,200 of these excluded operators are black (see appendix B for explanation of estimate), increasing the total number of black operators in 1978 (using the 1969 definition) to 84,471 -- a decline of 36.9 percent from 1969. The total number of white operators under the 1969 definition is estimated at 2,833,784 -- a decline of only 8.3 percent from 1969.

c/ These figures have been adjusted upward from those published by the Census Bureau to correct for serious undercounting of farmers in 1969. See appendix C for explanation of adjustment.

Source: U.S., Department of Commerce, Bureau of the Census, 1974 Census of Agriculture, vol. II, pt. 3, pp. I-82, I-10; 1978 Census of Agriculture, vol. I, pt. 51, pp. 2, 209.

increasingly targeted by land speculators and developers. "The frequent pattern is for land to remain in minority hands only so long as it is economically marginal, and then to be acquired by whites when its value begins to increase."[4]

The urgency of this situation is accentuated by the virtual irreversibility of black land loss. Today, only those who inherit land or who have other nonfarm sources of income can afford to purchase and operate farms. A recently released study by the U.S. Department of Agriculture found that the impact of inflation on land values is such that income from farming will not cover the early years of mortgage payments for beginning farmers. To the contrary, the Federal tax structure encourages absentee ownership and farm investment by speculators who are subsidized in their purchases by large tax writeoffs not available to low- or moderate-income farm families.[5] Few rural blacks are in a position to benefit from these government subsidies, and few black farmers who have lost, or are about to lose, their land will be able to repurchase farms in the years to come.

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4. U.S., Department of Commerce, Land and Minority Enterprise: The Crisis and the Opportunity, prepared by Dr. Lester M. Salamon for the Office of Minority Business Enterprise (1976), p. ii (hereafter cited as Land and Minority Enterprise). See also, Emergency Land Fund, To Save Our Land, undated, p. 14.

5. U.S., Department of Agriculture, A Time to Choose: Summary Report on the Structure of Agriculture (January 1981), pp. 74, 92, 120 (hereafter cited as Structure of Agriculture).

The loss of family and minority-owned farms runs counter to widely held and traditionally cherished values. Americans have long held the "belief that widespread ownership of land by those who farm it will produce a more responsible citizenry...."[6] A national opinion poll conducted by Louis Harris and Associates found:

> The public's preference is for a country which has a relatively large number of small farms.... Significantly, there is a broad-based consensus on this issue, with strong support for the small family farm in evidence in every region of the country and in every significant demographic subgroup of the population.[7]

The qualities of self-reliance, independence, and a sense of efficacy and self-worth have long been associated with landownership. Evidence suggests that as a result of the opportunity for self-employment, managerial experience, and considerably enlarged discretion over their lives, black landowners are "more self-reliant, better off nutritionally, more secure psychologically, and more confident of the future than black non-owners."[8] Research examining the effects of black landownership acquired through the resettlement programs[9] of the 1930s found that these programs generated "a substantial, long-term, positive impact, creating a permanent [though very small] cadre of black middle-class land-owners in possession of decent agricultural land...." The black landowners were found to be more civic minded, more active in social and political affairs, have a greater sense of self-worth, and enjoy the pride and prestige of landownership.[10]

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[6] Ibid., p. 78.

[7] Ibid., p. 16.

[8] Land and Minority Enterprise, p. 34.

In contrast, for many black people who migrated from rural to urban areas, life has been plagued by overcrowded and deteriorating housing, welfare dependency, crime, drugs, and alcoholism. Blacks who had been farmers often discovered little demand for their labor in city job markets, partly because they lacked industrial skills, and partly because of discrimination in urban labor markets.[11]

> Virtually every aspect of the urban crisis--poverty and welfare, employment, crime, housing and health--could be linked to a migration from rural America that resulted in too many people on too little space....

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[9] "Launched in 1934 under the auspices of the Division of Subsistance Homesteads of the Department of the Interior and then picked up in succession by the Federal Emergency Relief Administration, the Resettlement Administration, and the Farm Security Administration, the Resettlement Program was in operation until 1943." It provided loans and grants for families to acquire or improve farms. Ibid., p. 30.

[10] Ibid., p. 47.

[11] Gunner Myrdal, An American Dilemma (New York: Harper & Brothers, 1944), pp. 279-303.

> There never has been any national recognition of what this pellmell change meant in terms of stresses on our communities, schools, governments, homes, churches, neighborhoods, and on ourselves....
>
> The result has been a national crisis of environment--the relationship between the people and the land--and from this crisis others have erupted all around us.[12]

The lifestyle and economic bases of rural communities also suffer from the loss of small farms to outside speculators and corporate farmers. "...[A]reas dominated by larger farms have been shown to provide fewer social amenities to their residents. Rural businesses have also declined since the more sophisticated needs of larger farmers, coupled with improved transportation, have carried much of farm businesses outside of rural business centers."[13]

At stake is the survival of black-owned land and the future participation of blacks in agriculture. Also at stake is the survival of what has been the "largest single equity resource in minority hands" in the South, and the possibility of "utilizing minority owned land as a foundation for greater minority participation in the dramatic economic development activities occurring in the Southern region."[14]

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[12] Orville Freeman, "Toward a Urban-Rural Balance," in Land Use in the U.S., vol. 43, no. 2., ed. by Grant S. McClellen (New York: H.W. Wilson Co., 1971), pp. 46, 47.

[13] U.S., General Accounting Office, Changing Character and Structure of American Agriculture: An Overview (1978), p. v.

The loss of this land and the inability of blacks to endure as landowners may result in serious consequences for racial relations in this country. A society where whites control virtually all agricultural production and land development (including commercial, industrial, and resort development) is not racially equal. Such an imbalance can only serve to further diminish the stake of blacks in the social order and reinforce their skepticism regarding the concept of equality under the law.

The problems confronting rural blacks have long been considered by the U.S. Commission on Civil Rights as a blight on the conscience of this Nation. In 1965 the Commission conducted a study of the role of the U.S. Department of Agriculture (USDA) in helping black farmers make their agricultural efforts viable. In the report, Equal Opportunity in Farm Programs, the Commission expressed concern that while USDA had been "instrumental in raising the economic, educational, and social levels of thousands of farm and rural families...[a] quarter of a million Negro families stand as a glaring exception to this picture of progress."[15] The report documented specific findings of discrimination in USDA's Farmers Home Administration, Cooperative Extension Service, Soil

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[14] Land and Minority Enterprise, pp. ii-iii.

[15] U.S., Commission on Civil Rights, Equal Opportunity in Farm Programs (1965), p.8.

Conservation Service, and the Agricultural Stabilization and Conservation Service. For example, an indepth analysis of Farmers Home Administration (FmHA) data from 13 southern counties, revealed that in terms of the size of loans, purposes for which loans were to be used, and technical assistance, FmHA did not provide services to black farmers comparable to those provided to similarly situated whites.[16]

A 5-day Commission hearing held in Alabama 3 years later found no significant improvement in agricultural program services to blacks in Alabama since the 1965 report was issued.[17] In 1968 the Commission provided a series of detailed recommendations aimed at correcting extensive deficiencies found in USDA's enforcement of Title VI of the Civil Rights Act of 1964.[18] However, subsequent Commission reports issued in 1971,[19] 1973,[20] and 1975[21] revealed continued procrastination in this area.

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16. Ibid., pp. 57-82.

17. Paul Good, Cycle to Nowhere, prepared for the U.S. Commission on Civil Rights (Washington, D.C.: Government Printing Office, 1968), p. 17.

18. U.S., Commission on Civil Rights, The Mechanism for Implementing and Enforcing Title VI of the Civil Rights Act of 1964: U.S. Department of Agriculture (1968), reprinted in 115 Cong. Rec. 13456-65 (1969).

19. U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort: One Year Later (1971), pp. 124-131.

20. U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort---A Reassessment (1973), pp. 72-82.

21. U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. VI (1975), chap. 2.

A 1979 Commission report on fair housing found that Farmers Home Administration housing loans to blacks decreased from 19.6 percent of all FmHA housing loans in 1972, to 9.5 percent in 1976.[22] The same report found that FmHA's staff training and outreach were limited; compliance reviews were, at best, cursory; data collection was inadequate; no method for evaluating targets or assessing compliance existed; and target goals were set below performance levels as well as below targets set for the preceding year.

Thus, the Commission's findings over the past one and a half decades confirm the need for continuing appraisals of USDA's civil rights efforts.

The Secretary of Agriculture's Citizens' Advisory Committee on Equal Opportunity[23] also has taken a strong interest in USDA's role vis-a-vis black farmers. In December 1980 the Advisory Committee recommended that "USDA take a direct policy stance to stop the loss of minority owned farm land" and expressed "particular concern" for the "loss of land by Black farmers in the South." The Advisory Committee felt that USDA should expand programs with special credit provisions for small farmers ("since many small farmers are members of minority groups") and "institute a special grant-loan-educational program to assist low income, small farmers and help them retain their land."[24]

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[22] U.S., Commission on Civil Rights, The Federal Fair Housing Enforcement Effort (March 1979), pp. 131-150.

[23] Appointed by the Secretary of Agriculture, the Citizens' Advisory Committee on Equal Opportunity held its first meeting on Sept. 5, 1979. "Committee members have expertise in a broad spectrum of areas including farming, education, business, consumer action, and community affairs. Blacks, Hispanics, Asian Americans, and Native Americans are all represented." U.S. Department of Agriculture, Citizens' Advisory Committee on Equal Opportunity Report to the Secretary (December 1980), pp. 1, 6.

While there is a need to examine all problems of racial, ethnic and sex discrimination in agriculture, this report focuses on the conditions of black farmers because of the urgency of their situation. Available data suggest no other minority group has experienced, in the last century, a loss of farm operations at a rate comparable to blacks.[25]

Chapter 2 of this report outlines the historical conditions -- racism, a lack of institutional economic support, and possession of only marginal landholdings -- that directly contributed to black land loss in the past. These adversities set the stage for the struggle that black farmers face today. Chapter 3 discusses how these historical conditions have combined with current economic factors to perpetuate a disadvantageous, noncompetitive position for black farmers that presently threatens their survival as farmers. While all of USDA's farm programs have a vital role to play in the life of black farmers, this report focuses on the farm credit

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24. Ibid., pp. 20-21.

25. According to the U.S. Bureau of the Census, there were 22,645 farms operated by "other races" in the United States in 1978, compared with 41,714 at their peak in 1940 and 31,073 in 1910. "Other races," as defined by the census, includes American Indians, Asian or Pacific Islanders, and any other separate racial group "excluding white." These data are somewhat limited. For example, within the "other races" category, 8,347 farm operators were identified as American Indians in 1978. However, in some cases, entire Indian reservations have been counted by the census as one farm with one farm operator. In addition, the census did not identify Hispanics apart from whites until 1974. The census counted 7,621 farm operators of "Spanish Origin" in 1974 and 22,997 in 1978. This apparent three-fold increase between 1974 and 1978 reflects, to some extent, an undercount of farm operators, particularly minorities, which occurred in the 1974 census (see appen. C). 1974 Census of Agriculture, pp. I-15, I-83; 1978 Census of Agriculture, p. 209 and appen. A-5-7.

programs of the Farmers Home Administration.[26] FmHA is the principal public lending institution for this Nation's rural communities, and historically, it has played a major role in serving struggling farmers. Through its credit programs, FmHA has the capability and jurisdiction to assist black farmers most expeditiously, in an effort to prevent the further loss of their lands. Chapter 4 of this report reviews the programs and missions of FmHA's farm credit programs and analyzes data reflecting the levels of black participation in these programs in 1981.[27]

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[26] Detailed analyses of Federal farm programs other than those of the Farmers Home Administration, such as USDA's Soil Conservation Service and the Agricultural Stabilization and Conservation Service, as well as State programs, including the Cooperative Extension Service, would be useful but are beyond the scope of this report.

[27] A draft of this report was sent to the Secretary of Agriculture requesting the Department's comments. (John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, letter to Secretary of Agriculture, John R. Block, November 10, 1981.) In lieu of providing written comments, officials of the Agriculture Department requested a meeting between Farmers Home Administration and Commission staff. (Ruth A. Reister, Deputy Under Secretary for Small Community and Rural Development, letter to John Hope III, December 28, 1981.) At that meeting, FmHA officials praised the report for its comprehensiveness and for an "outstanding job of documenting the history of problems black farmers have faced." The officials maintained, however, that these problems cannot be solved by credit alone and that FmHA is not in a position to provide the assistance necessary. They interpret FmHA's responsibilities narrowly, as those of a banking institution which "must be able to collect on its loans" and does not have the "jurisdiction to make loans for social purposes". While the Commission agrees that the problems of black farmers require more than just credit, the Commission also believes that FmHA's role, to provide supervision and loans for essential needs to farmers who cannot obtain credit elsewhere, can be of valuable assistance to black farmers. As discussed in Chapter 4, this role serves an important social function which entails responsibilities which go beyond those of traditional lending institutions. (Meeting between Farmers Home Administration and Commission staff, Washington, D.C., Jan. 6, 1982. Specific comments made by FmHA officials at this meeting have been incorporated, where appropriate, into the text and footnotes of this report.)

Chapter 5 examines USDA's civil rights enforcement activities at various administrative levels and assesses their impact on FmHA's loan services to minorities. The report's conclusions and recommendations are presented in the final chapter.

Chapter 2

Historical Background

The adversity facing blacks in their efforts to acquire and retain their own land is rooted in the racial attitudes of the South. Historically, black farmers were disadvantaged by limited access to land, possession of only marginal landholdings, restricted credit and usurious interest rates, a dearth of opportunities for advancement, and an inequitable share in government benefits.

The freedom gained by 4 million slaves after the Civil War did not transfer economic independence to most blacks. Those who had great expectations of receiving a share of their slave masters' land found themselves, instead, with little more than their own clothes, a few tools, and perhaps some farm animals.[1] While land prices were low immediately after the War, few blacks had the cash needed to buy land.

> None had inherited money or other assets from slavery. Very few whites presented freedmen with gifts, and most blacks had been free too short a time to have earned income and saved enough to buy a homestead. A few blacks, who received income for work performed in areas controlled by the Union army, did manage to save a limited amount of

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[1] Manning Marable, "Historical Perspective", in The Black Rural Landowner - Endangered Species, ed. Leo McGee and Robert Boone (Westport, Conn.: Greenwood Press, 1979).

> capital. Others received bounties from the United States in recognition of military service during the war. Nevertheless, such cases were the exception. Only a handful were sufficiently endowed to afford the purchase of a farm, the work stock, and the tools necessary to support a family.[2]

Promises of land distribution among the freed slaves were not fulfilled. Although Congress established the Bureau of Refugees, Freedmen, and Abandoned Lands in March 1865, to confiscate land and property of rebels in the Confederate cause for redistribution among the freed slaves,[3] President Andrew Johnson declared a "general amnesty from confiscation" several months later. In 1867 Representative Thaddeus Stevens (R-Pa) introduced a bill that "would have granted forty acres and fifty dollars to every former slave who was head of household," but the bill was defeated in Congress.[4]

Whites in the South made every effort to maintain their superior social and economic position. "The determination to 'keep the Negro in his place' was, if anything, stronger after the Civil War than before."[5] Opposition to black advancement was intense among those who had fought with their lives to preserve the plantation system of the South. The sale of land to blacks was discouraged, and whites who agreed to sell land (usually at inflated prices) or to provide necessary financing "were not uncommonly threatened with physical violence."[6]

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[2] Roger Ransom and Richard Sutch, One Kind of Freedom: The Economic Consequences of Emancipation (New York: Cambridge University Press, 1977), p. 82. See also, Thomas Jackson Woofter, Jr., Negro Migration: Changes in Rural Organization and Population of the Cotton Belt (originally published in 1920 by W.D. Gray, New York, reprinted in 1969 by Negro Universities Press, a Division of Greenwood Publishing Corp., N.Y.) p. 38.

[3] Act of Mar. 3, 1865, ch. 90, 13 Stat. 507.

[4] Ransom and Sutch, One Kind of Freedom, p. 82.

Similarly, blacks were thwarted in their efforts to obtain an education. During slavery their education had been outlawed, and following the Civil War, 90 percent could neither read nor write. Their eagerness to obtain an education following Emancipation met violent resistance.[7]

> Emancipation removed the legal distinction between the South's two races, but it left them in grossly unequal economic positions. The blacks lacked assets; they lacked education; they lacked [some] skill[s]. From the outset there were whites who sought to preserve the social and political inequalities between the races, and these white supremacists perceived that to do so they would have to maintain the economic inequalities as well. When necessary, a campaign

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[5] Charles S. Johnson, Edwin R. Embree, and W.W. Alexander, The Collapse of Cotton Tenancy (Freeport, N.Y.: Books for Libraries Press, 1935, reprinted 1972), p. 10.

[6] Ranson and Sutch, One Kind of Freedom, p. 87.

[7] Ibid., pp. 13-15.

> of violence was launched to prevent blacks from acquiring assets, education, or skills. But the violence was only the most visible way in which racial suppression worked. The most powerful and most damaging way was indirect. Southerners erected an economic system that failed to reward individual initiative on the part of blacks and was therefore ill-suited for their economic advancement. As a result, the inequalities originally inherited from slavery persisted.[8]

While the plantation system was shaken by the Civil War, it was not destroyed, and sharecropping replaced slavery as the prevailing relationship between white landowners and black farmers without land. One-tenth of all landowners controlled from one-half to two-thirds of all the land in most southern counties.[9] More than 70 percent of the blacks in the cotton States were employed in agriculture.[10] In 1880 blacks owned less than 8 percent of all farms.[11]

Sharecropping, while a more subtle form of dominance than slavery, yielded similar patterns of control and subservience. The sharecropper typically paid the landowner one-half of his crop as rent; the landowner provided housing, fuel, animals, tools, seed -- and close supervision. The cost of fertilizer was deducted from the crop. The landlord weighed and marketed the cotton and kept all sales and financial records. Food, clothing, and household needs were obtained by the sharecropper, usually on credit at high interest rates.[12]

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[8] Ibid., p. 186.

[9] Marable, "Historical Perspective," p. 3-5.

[10] Ransom and Sutch, One Kind of Freedom, p. 225.

[11] Ibid., p. 84.

Sharecropping was not a stepping stone to advancement. "Perennial indebtedness was inescapable for most, and the whole system was an invitation to the practice of deceit and fraud by sharp-dealing merchants."[13] Merchants charged from 25 to 100 percent markups or interest on supplies.[14] Labor contract legislation allowed oral contracts which enabled landlords to secure liens over a sharecroppers entire crop.[15] Initiative and hard work were not rewarded under this system.

> It is to the advantage of the owner to encourage the most dependent form of share cropping as a source of largest profits. And he wishes to hold in greatest dependence just those workers who are most efficient. A shiftless and inefficient cropper is of little value to the owner and is

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[12] Ibid., p. 90.

[13] George Brown Tindall, South Carolina Negroes 1877-1900 (Columbia: University of South Carolina Press, 1952), p. 107.

[14] Tindall, South Carolina Negroes, p. 105. Also, see Johnson, The Collapse of Cotton Tenancy, pp. 26, 28.

[15] Tindall, South Carolina Negroes, p. 111.

> expelled.... The industrious and thrifty tenant is sought by the landlord. The very qualities which might normally lead a tenant to attain the position of renter, and eventually of owner, are just the ones which make him a permanent asset as a cropper. Landlords, thus are most concerned with maintaining the system that furnishes them labor and that keeps this labor under their control, that is, in the tenancy class.[16]

Sharecroppers had little freedom to seek out better working conditions. In South Carolina, for example, to recruit or hire workers who were under contract to another landowner was illegal, and a law enacted in 1897 provided punishment for "laborers who had received advances in money or supplies and afterward failed to perform 'the reasonable service required of him by the terms of the said contract'."[17] The "mere threat" of enforcement of these laws "was sufficient to keep Negro laborers in virtual bondage."[18]

These times were also very difficult for those blacks who were able to buy their own farms. Their landholdings often were less fertile than property owned by whites, and in all types of land tenure--owner-operated, rented, and sharecropped farms--blacks had fewer acres of cropland than their white counterparts. To compensate, black owners and sharecroppers were compelled to work their land more intensely, cultivating a greater proportion of their acreage than whites in an attempt to maximize their yields. In 1880, "among small family farms the ratio of untilled to tilled acres for white farmers was more than twice the ratio for black farmers, regardless of the form of tenure."[19] Unfortunately, despite a greater need for fertilizer to replenish their overworked, mineral-depleted soil, blacks received less financing than whites for this purpose.[20]

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[16] Johnson, The Collapse of Cotton Tenancy, p. 8. Also, see Ransom and Sutch, One Kind of Freedom, p. 180.

[17] Tindall, South Carolina Negroes, p. 112.

[18] Ibid., p. 113.

Furthermore, most blacks were prevented from rejuvenating their soil by crop rotation because local merchants, the sole source of credit for small farmers, would extend financing only for cotton, a safe cash crop that would have a ready market in the event of foreclosure.[21] Caught in a cycle of diminishing returns, productivity per acre declined, as black farmers were compelled to put increasing acreage into cotton. Ultimately, general overproduction depressed the price of this crop from 29 cents per pound in 1868 to 5 cents per pound in 1898--below cost.[22]

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19. Ransom and Sutch, One Kind of Freedom, pp. 182, 184.

20. Ibid., p. 183.

21. Tindall, South Carolina Negroes, pp. 106. Also, see Ransom and Sutch, One Kind of Freedom, pp. 163, 185.

22. Marable, "Historical Perspective," p. 11.

A positive development for black farmers during this period was the creation of small, black-owned banks and lending institutions. Beginning in the 1880s, with the combined resources of a few black ministers, entrepreneurs, and educators, more than 50 black-owned lending institutions were established by 1911, with annual transactions worth more than $20 million.[23] Other significant factors favorably influencing black agriculture were the increase of literacy and the establishment of dozens of black agricultural and teachers colleges enabling blacks to acquire a range of farming skills.[24]

Economic conditions improved dramatically in the early 1900s as a result of increasing southern industrialization and a rapid rise in cotton prices.[25] By 1910 blacks were able to buy millions of acres of land in North and South Carolina, Mississippi, Alabama, and Georgia. More than 240,000 blacks owned their farms--comprising about 16.5 percent of all southern landowners. Another 670,000

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23. Ibid., pp. 11-12.

24. Ibid. "The Agricultural and Mechanical College for Negroes was established in Normal, Alabama, in 1875....With the financial support of northern philanthrophic agencies and churches, dozens of black agricultural and teachers' training colleges were established...." including Georgia State Industrial College in Savannah; Knox Academy in Salem, Alabama; Tuskegee Institute; Haines Normal and Industrial Institute in Augusta, Georgia; Utica Normal and Industrial School in Utica, Mississippi; and the State Normal School in Montgomery, Alabama. Ninety percent of all blacks were illiterate at the end of slavery. By 1900 illiteracy had dropped to 50 percent.

25. Ibid., p. 9.

blacks were tenant farmers--constituting 43.6 percent of all southern tenant farmers.[26]

However, it was only with the approval of the local white community that blacks were likely to become landowners. In addition to a history of hard work and credit-worthiness, a prospective black buyer had to be considered "safe," and to "know his place." Those blacks who became landowners often were chosen by whites who, in a paternalistic relationship, "sponsored" or assisted a favored black farmer in acquiring his own parcel of land. Otherwise, blacks were most successful if they had all cash, or large sums of money accompanied by an offer to pay off the remaining debt in an inordinately short amount of time. But these conditions were not necessarily sufficient. On occasion, blacks were known to offer double the asking price for a piece of land, and still be refused; the prospective black buyer was not permitted to purchase sought-after land. He was restricted to areas with less fertile soil, perhaps tucked away in the hills, not too close to the main highways or railroads, nor to white schools or churches.[27]

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[26] U.S., Bureau of the Census, Agriculture: Farm Statistics by Color and Tenure of Farmers (reprint of chap. IV, vol. V., Fourteenth Census Reports, 1923) pp. 189, 191. "Tenants" in the broad use of the term includes renters, share-tenants and sharecroppers. Renters pay for the use of land with a fixed amount of cash or its crop equivalent; share-tenants furnish their own farm equipment and animals, but pay a fixed percent, usually one-fourth to one-third of the cash crop which they raise; sharecroppers are furnished by the landlord, farm tools, animals, fertilizer, and often the food they consume, in exchange for a larger percentage of the crop, usually one-half. Johnson, The Collapse of Cotton Tenancy, p. 6.

With the outbreak of the first World War in 1914, the bottom fell out of the cotton market. Europe ceased transatlantic trading for about 3 months, and the price of cotton plunged below cost. The southern establishment realized the need for emergency intervention to pull cotton farmers through this crisis. Credit was extended and cotton storage provided -- but mostly for white farmers.[28]

> Senator John H. Bankhead of Alabama proposed that his state extend $40 million worth of credit to farmers and store their cotton in State warehouses. Asa G. Candler, an Atlanta millionaire and a director of the Coca Cola Company, offered low-interest loans to white planters and stored one-quarter of a million bales of cotton in his huge warehouses.[29]

In contrast to the aid provided white farmers, many merchants refused to extend credit to blacks for anything but cotton cultivation, since black farmers lacked experience in other crops. Consequently, many thousands of blacks found themselves unable to pay off their

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27. Arthur F. Raper, Preface to Peasantry (University of North Carolina Press, 1936; reprinted New York: Athenum, 1968), pp. 121-122, 125. See also, Myrdal, An American Dilemma, pp. 241-42.

28. Marable, "Historical Perspective," p. 16.

29. Ibid.

mortgage payments and notes of credit, and were compelled to sell their land for a fraction of its value.[30]

Even more devastating to cotton farmers than the first World War was the boll weevil, whose larvae consume cotton, which spread across the South, reducing cotton yields by as much as 20 to 50 percent per acre.[31] Most black farmers could not afford expensive insecticides or poisons, and by 1921, the boll weevil had spread across the entire Cotton Belt, taking a heavy toll in areas such as the Black Belt of Alabama, where the majority of farmers were black.[32] During this period, white farmers borrowed heavily to keep their land. They began to purchase cattle and diversify their crops, decreasing their dependence on cotton. However, by 1918, almost all of the black-owned lending institutions had failed as a result of the collapse of the cotton market, closing off virtually all sources of credit for black farmers. Many more blacks, with mounting debts and no sources of credit, had no choice but to abandon their farms.[33]

Between 1920 and 1930 the decline in the number of black farm operators took its toll almost totally from the landowning class.

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30. Ibid., pp. 16, 17.

31. Ibid., p. 17.

32. The "Black Belt" is so named for the color of its soil.

33. Marable, "Historical Perspective," p. 16.

With large mortgage debts to be paid off quickly under short-term contracts, these landowners found they could not meet their payments in the continuing years of agricultural depression. As a result, many of these farmers, whose life savings were invested in their farms, lost everything and were reduced once again to tenancy.[34] Out of a decline of 42,858 black farm operators in the United States during this period, 37,596 were owners, 4,159 were tenants and 1,103 were managers. The number of black-owned farms decreased by 17.2 percent, a rate of loss twice that experienced by whites during the same period.[35] A loss of 2,749,619 acres of black-owned land was suffered during this decade, an amount more than twice the size of the State of Delaware.[36]

New job opportunities created in the North as a result of the first World War provided blacks with an alternative to the hardships they endured as southern farmers and sharecroppers. By 1930 the number of blacks migrating north had increased more than five-fold since the late 1800s.

> From 1880 to 1910, only 79,400 blacks left the Blackbelt for the North; between 1910 and 1920 the figure leaped to 226,900, and from 1920 to 1930 about 440,400 black migrants fled the Deep

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34. Raper, Preface to Peasantry, p. 130.

35. U.S., Bureau of the Census, The Negro Farmer in the United States (Fifteenth Census of the United States: 1930 Census of Agriculture), p. 37.

36. Ibid., p. 7.

> South. Most if not all of these people were sharecroppers, small owner-operators, or workers in jobs connected with agriculture.[37]

In an effort to curb the loss of cheap labor, southern States and communities "resurrected ancient statutes concerning 'vagrancy'" to inhibit free movement of blacks, and placed severe restrictions on agents attempting to recruit labor for the North.[38]

The black exodus from the South was caused as much by a desire to escape the racial injustices of the South as by the attraction of northern wages.[39] By 1914, southern blacks had become almost totally disenfranchised. Fear and intimidation through racial violence continued to be a part of southern life. Between 1882 and 1918, 3,040 blacks died by lynching; another 619 lynchings took place between 1918 and 1937. A large number of these hangings occurred because of black resistance to the "vicious practice of debt slavery."[40]

Southern agricultural counties involved primarily in raising cotton had higher rates of lynching than other farm counties. Out of 551 cotton-growing counties, 345 (62.6 percent) had at least one

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37 Marable, "Historical Perspective," p. 19.

38. American Civil Liberties Union, Black Justice (May 1931), p. 26.

39. Dewey H. Palmer, "Moving North; Migration of Negroes during World War I," in David Bromley and Charles F. Longino, Jr., White Racism and Black America (Cambridge, Mass: Schenkman Pub., 1972), pp. 31-33.

40. Ibid., p. 3.

lynching between 1900 and 1931; 170 of these counties (30.9 percent) had 10 or more lynchings.[41]

> The spectacle of a worker trying to organize a union, of a sharecropper going among his fellows seeking to improve their working conditions, of a Negro refusing to remain in peonage or not caring to pick cotton, when there is cotton in need of picking, sends the hanging judge into a fury.[42]

As blacks fled the hardships of the "Cotton South," whites apparently were attracted by the breaking up of the plantations; they moved in as tenant farmers, with aspirations of becoming landowners.[43] Between 1920 and 1930, the number of white families drawn into cotton tenancy in the South increased by more than 200,000--approximately a million persons.[44]

Increased competition between blacks and whites within agriculture only served to keep blacks at the bottom of the economic ladder. For example, in Macon and Greene Counties, Georgia, white sharecroppers objected "to being treated on parity with the Negro cropper," and most planters did not mix the races. Often, black workers were kept as croppers while whites worked as share-tenants or renters, illustrating that the form of tenancy was "an index of social as well as economic conditions."[45] In 1925, 71.1 percent of the South's landless white farmers were renters or share-tenants and 28 percent were croppers; by contrast, 45.9 percent of the blacks were renters or share-tenants, while 54.1 percent were croppers.[46] This hierarchy further diminished opportunities for blacks, since it was most often from "cash renting or its equivalent, produce-renting" that farmers were able to accumulate savings and emerge as landowners.[47]

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[41] Charles S. Johnson, Statistical Atlas of Southern Counties (Chapel Hill: University of North Carolina Press, 1941), p. 32.

[42] Frank Shay, Judge Lynch (Binghamton, N.Y.: Vail-Ballow Press, 1938), p. 78.

[43] Raper, Preface to Peasantry, p. 187.

[44] Johnson, The Collapse of Cotton Tenancy, p. 4.

By 1932 the price of cotton had fallen again to 5 cents per pound, with worse prospects for 1933; the Agricultural Adjustment Act[48] was passed by Congress in 1933 in an effort to avert a total collapse of American agriculture. The act sought to raise farm prices through a reduction in production by providing rental or benefit payments to farmers who withdrew acreage from

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45. Raper, Preface to Peasantry, p. 149.

46. U.S., Bureau of the Census, Census of Agriculture: 1925-Summary (1928), p. 14.

47. Raper, Preface to Peasantry, p. 148. By paying a fixed amount for the use of land, renters and share-tenants were more independent of their landlords and less subject to chicanery than sharecroppers. They were also more likely to live in one place longer.

48. Act of May 12, 1933, ch. 25, 48 U.S. Stat. 31.

cultivation.[49] The subsequent "plow-up" of cotton was estimated to have taken 10,400,000 acres or 25 to 50 percent of each producer's acreage out of production.[50]

While the reduction in cotton acreage reduced by one-quarter the labor needed to cultivate, harvest, and gin cotton, the act was developed and passed with little thought given to its consequences for millions of tenant farmers and sharecroppers.[51] The Agricultural Adjustment Administration (AAA) instructed landlords to divide benefits with their tenants in proportion to their share in the plowed-up crop,[52] but landlords were allowed to collect debts, often at usurious interest rates, before distributing benefits.[53] Tenants and sharecroppers seldom received cash as payment for their share in the plow-up.[54] Government studies found that "[w]hether the tenant received anything at all depended on the charitableness of the landlord."[55] In a number of cases, the cropper's share was plowed-up, and he was simply sent "down the road."[56] In the case of small landowners, creditors appeared on the benefit checks as joint-payees, deducting their debts due, often with nothing left over for the farmer. While large plantation owners could cut their costs by cutting down on the number of croppers and tenants, small landowners had no extra margin of surplus and any cut in production made the loss of their farms more imminent.[57]

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[49] David E. Conrad, The Forgotten Farmers (Urbana: University of Illinois Press, 1965), pp. 23-24.

[50] Johnson, The Collapse of Cotton Tenancy, p. 48.

[51] Conrad, The Forgotten Farmers, p. 36.

[52] Ibid., p. 52.

[53] Ibid., pp. 59, 66; Johnson, The Collapse of Cotton Tenancy, pp. 50-54; Arthur F. Raper and Ira De A. Reid, Sharecroppers All (Chapel Hill: University of North Carolina Press, 1941, reprinted New York: Russell & Russell, 1971), pp. 39-43.

[54] Conrad, The Forgotten Farmers, p. 66; Johnson, The Collapse of Cotton Tenancy, p. 52.

While the 1934 version of the contract which the government entered into with farmers under the Agricultural Adjustment Act acknowledged the problems facing tenants and croppers, its protective provisions were unenforceable. Illiteracy and ignorance of the complexities of the contract rendered tenants extremely vulnerable, and in many instances tenants were forced to sign over their benefits to the landlord.[58] At the national level, the AAA acknowledged that "landlords were violating the 1934 contract by evicting tenants, converting them from tenants to wage hands, withholding benefit payments from them by various devices, refusing to grant the status of managing share-tenant, and raising rents."[59]

At the local level, the AAA was administered by the Department of Agriculture's Extension Service County Farm Demonstration Agents and Agricultural Conservation Committees. Blacks had little influence over the selection of these agents and committeemen, and these individuals, for the most part, represented the interests of the white large landowners. Their role was powerful; they determined, based on complex records and calculations, the allotment of cotton acreage and benefit payments to local farmers. "The accuracy of the records and calculations depended on the good-will, conscientiousness, and competence of those in charge" locally. The fact that black tenant farmers and landowners were least represented in these positions of power, that they were at the bottom of the social and economic ladder, and that they were poorly educated and in many cases illiterate, left them extraordinarily vulnerable to interpretations of regulations and "facts" which favored the interests of large white landowners.[60]

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[55] Johnson, The Collapse of Cotton Tenancy, pp. 60-61.

[56] Webster Powell and Addison Cutler, "Tightening the Cotton Belt," Harpers, February 1934, p. 315.

[57] Ibid., pp. 312-317.

[58] Conrad, The Forgotten Farmers, pp. 59, 67.

[59] Ibid., p. 69.

While these were extraordinarily difficult times for all small farmers, black farmers appear to have suffered greater adverse consequences under the AAA than whites. Blacks appear to have been more easily exploited — either coerced into signing over their benefits or credits to their landlords or downgraded in status to seasonal wage laborers, thus rendering them ineligible for benefits altogether.[61] Furthermore, to increase their share of AAA benefits some landlords displaced sharecroppers and renters with machines;

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60. Myrdal, An American Dilemma, pp. 258-259. Salamon, Land and Minority Enterprise, p. 31.

61. Johnson, The Collapse of Cotton Tenancy, p. 60; Raper, Preface to Peasantry, p. 82; Myrdal, An American Dilemma, p. 253.

the landlords' AAA benefits provided the increased cash necessary to make these investments. Mechanization most adversely affected blacks since it was most effectively introduced on cotton plantations,where blacks outnumbered whites, and because whites were given preference over blacks for the jobs as machine operators.[62]

Racial discrimination in public education played a significant role in the subordination of black farmers. High rates of illiteracy among blacks facilitated their exploitation as sharecroppers and tenant farmers and restricted their ability to rise to the level of farm owners. For example, in North Carolina in 1922, 58 percent of the black adult sharecroppers and 64 percent of the black adult tenant farmers were illiterate. In contrast, 90 percent of black farm owners could read and write, suggesting a high correlation between literacy and landownership.[63]

High rates of illiteracy among blacks reflected blatant racial discrimination in southern education, especially in plantation areas. A study of Macon and Greene Counties, Georgia, revealed dramatic disparities in educational expenditures between black children and white children. "In 1928, the white child of school age in Greene had $36.53 public money spent upon his education, the Negro child, $3.11 -- a ratio of twelve to one. In Macon, the white child received $53.38 and the Negro $2.85 -- a ratio of eighteen to one."[64] Blacks made up 56.7 percent of the school population in Greene, but received 10 percent of the public school funds; in Macon, the 70.1 percent of the children who were black received 11.1 percent of the public funds. These disparities increased even further in 1934, as public monies for education decreased.[65]

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[62] Myrdal, An American Dilemma, pp. 258-59. The number of tractors used in the 10 cotton States almost doubled between 1930 and 1937; in Texas, the number of tractors increased from 9,000 in 1920 to 37,000 in 1930, to 99,000 in 1938. "On cotton farms each tractor displaces from one to three families." Raper and Reid, Sharecroppers All, p. 44.

[63] Johnson, The Collapse of Cotton Tenancy, p. 77.

With their limited education and training, blacks particularly needed the type of outreach and agricultural advice traditionally provided by the Extension Service of the U.S. Department of Agriculture. However, the Extension Service agents worked on a segregated basis, and the ratio of black agents to the black population living on farms in the South was less than half the ratio of white agents to white farm residents.[66] Furthermore, technical assistance and training for black tenants and sharecroppers was limited by the fact that landlords "objected" to black agents "approaching families on their holdings." According to a USDA publication, "Negro tenant farmers and croppers might best receive aid on the agricultural side principally through the white agents working with the landlords and managers."[67]

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[64] Raper, Preface To Peasantry, p. 306.

[65] Ibid.

[66] Myrdal, An American Dilemma, p. 272.

Thus, between 1930 and 1935, the total number of black farmers declined by 8 percent in the South, while white farmers increased by 11 percent. The status of black farmers continued shifting downward from renters to croppers to wage laborers, while whites were upwardly mobile. The number of white landowners increased by 12.3 percent. In 1935, 71 percent of the white tenant farmers were renters or share-tenants (an increase from 64.9 percent in 1930) while 29 percent were croppers. For black tenant farmers, 41.0 percent were renters or share-tenants, (a decrease from 43.8 percent in 1930) and 58 percent were croppers.[68] The study of Macon and Greene Counties found that the proportion of black farmers who were sharecroppers declined 14.7 percent between 1927 and 1934, corresponding directly with a 14.0 percent increase in black seasonal wage hands and laborers during the same period.[69]

This study also found that within each tenure class, whites earned more than blacks. "In 1934, in Greene, the average cash income was $301.26 per rural white family and $150.74 per rural Negro family; in Macon, $872.21 for the white and $299.56 for the Negro" per year.[70] Although blacks had a disproportionately greater need for assistance in these counties, a greater proportion of whites than blacks received relief from the Federal Emergency Relief Administration.[71] Furthermore, whites received larger amounts of relief than blacks. The average monthly expenditure for direct relief for blacks in Greene County in 1934 was 20 percent less than for whites; in Macon, blacks received less than half the amount received by whites.[72] Of Georgia's 55 rural counties with black majorities, all but 5 had relatively fewer blacks than whites on relief, and the amount of relief provided black families was consistently less than for whites.[73]

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[67] Ibid.

[68] Ibid., p. 253.

[69] Raper, Preface to Peasantry, p. 34.

[70] Ibid., pp. 35-36.

Inequities in public benefits also existed in the Farm Security Administration (FSA), established in 1937 particularly to assist small farmers.

> Especially in matters of race, the leaders of the FSA were careful. In their allocation of loan and grant funds, in their personnel appointment[s], in their cooperative and group enterprises, in their resettlement projects, and in their public information activities they adhered fairly consistently to southern attitudes

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[71] Ibid., p. 260. The Federal Emergency Relief Administration was the Nation's primary social welfare agency between 1933 and 1935. "....[T]he federal government carried the main financial [welfare] responsibility over the whole field and particularly in the South." Myrdal, An American Dilemma, p. 1277.

[72] Ibid., p. 260.

[73] Raper and Reid, Sharecroppers All, p. 134.

and practices regarding race.[74]

Despite the efforts of some FSA officials toward at least token integration, political pressures were such that State and county FSA committees, responsible for reviewing loan applications and providing advice regarding the establishment of upper and lower tenant purchase loan limits, did not have black members.[75] In addition, county and district FSA supervisors tended to "skim the cream" (choose the safest credit risks) in their selection of recipients and to discriminate against black applicants.[76]

The standard rural rehabilitation loan program, the most extensive activity of the FSA, was intended to serve low-income farmers, including owner-operators, tenants, sharecroppers, and farm laborers.[77] The program provided credit, farm and home management planning, technical assistance and/or supervision.[78] By 1934, 695,000 farm families, 1 out of 9 farm families, had received one of these loans, averaging $240 in 1937 and $600 in 1943. As of 1939, about 30 percent of all borrowers had "been helped to advance from the status of sharecropper to that of tenant."[79] The standard rural rehabilitation loan program was "consciously intended to serve higher-risk client families," and thus it was "paradoxical that it too discriminated against Negro low-income families."[80] While blacks constituted 37 percent of all low-income farm families in the South, they received only 23 percent of the standard rehabilitation loans in 1939.[81] "A white low-income farm family had a two-to-one advantage over a Negro family in obtaining a standard loan. The odds against a Negro family ranged from three-to-one in Tennessee to seven-to-one in Mississippi."[82]

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[74] Sidney Baldwin, Poverty and Politics (Chapel Hill: University of North Carolina Press, 1968), p. 279.

[75] Ibid., pp. 306, 307; Also see, Myrdal, An American Dilemma, pp. 274-75.

[76] Baldwin, Poverty and Politics, p. 254.

[77] Richard Sterner, The Negro's Share, (New York: Harper Bros., 1943), p. 298.

[78] Baldwin, Poverty and Politics, p. 200.

Other FSA programs also failed to serve blacks on an equitable basis. The tenant-purchase program provided loans to tenants, sharecroppers, and farm laborers, enabling them to become owners of family-sized farms. While blacks comprised approximately 35 percent of all tenants in the South, they received only 21 percent of the tenant-purchase loans (1,919 out of 8,988 loans as of 1940). Despite their disproportionately depressed condition, blacks constituted only one-fourth of the families served by homestead projects.

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79. Sterner, The Negro's Share, p. 304. "By the end of 1946, of the 893,000 farm families who had received rural rehabilitation loans since the beginning of the program, more than 434,000 had repaid them in full. "Baldwin, Poverty and Politics, p. 201.

80. Baldwin, Poverty and Politics, p. 200.

81. Sterner, The Negro's Share, p. 300.

82. Baldwin, Poverty and Politics, p. 201.

Finally, the grant program, providing basic emergency assistance and rehabilitation to needy farm families, bestowed grants to whites that were 20 percent larger than those to blacks.[83]

The fact that in rural areas of the South whites had more opportunities and received greater amounts of assistance than blacks explains, at least in part, why many whites returned to these areas during the depression years, while blacks continued to leave agriculture and migrate to urban areas.[84]

In the 1940s and 1950s the success of tractors, followed by mechanical harvesters, and finally by chemical weed control, led to the displacement of thousands of tenant farmers, most of them black. Between 1945 and 1959, the number of black tenant farmers declined by 70 percent. "Lacking land, the tenant has no defense against mechanization and may find himself displaced if the landlord decides to operate with more machinery and fewer men. He is usually the loser, too, when crop allotments are cut and there is less acreage to be divided among tenants."[85]

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[83] Sterner, The Negro's Share, pp. 307, 300, 304.

[84] Raper and Reid, Sharecroppers All, p. 53; Sterner, The Negro's Share, p. 20.

[85] Calvin L. Beale, "The Negro in American Agriculture," reprinted by USDA from American Negro Reference Book, ed. John P. Davis (1976), p. 167.

The number of black landowners also declined during this period--by 33 percent.[86] The discovery that cotton grew well under irrigation in the West increased competition, forcing many small southern farms out of cotton.[87] Black small farm owners, who could not afford machines or use them efficiently on such small landholdings, were hard-pressed to compete in cotton, soybeans, or corn.[88]

However, while the number of cotton-growing black farmers in this country declined, the number of nonwhite tobacco farmers rose from 42,000 to 91,000 between 1910 and 1945. By 1959 black farmers were growing one-sixth of all cigarette tobacco and one-tenth of the cotton.[89] While blacks played an increasing role in tobacco relative to whites, their numbers were still significantly greater in cotton; as of 1959, 56 percent of the nonwhite-operated[90] commercial-size farms[91] in the South concentrated on cotton, 26 percent were in tobacco, 6 percent were general farms (usually a combination of either cotton, tobacco, and peanuts), and 3 percent were in other field crops, usually peanuts.[92] This crop distribution contrasted with that of white-operated farms, of which only 18 percent were concentrated in cotton, 19 percent in tobacco, and 62 percent in other crops.[93]

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[86] Ibid.

[87] Ibid., pp. 166, 167.

[88] Robert S. Browne, Only Six Million Acres: The Decline of Black Owned Land in the Rural South (New York, N.Y.: Black Economic Research Center, 1973), pp. 26, 27.

[89] Beale, "The Negro in American Agriculture," pp. 169-70.

[90] In 1959 over 98 percent of all nonwhite-operated farms in the South were operated by blacks. Beale, "The Negro in American Agriculture," pp. 171, 173.

[91] "Commercial" farms were defined by the Census Bureau as farms with sales of "over $2,500 worth of products in a year, plus those selling a lower amount whose operators are not elderly and have little off-farm work." Ibid., p. 179.

A dramatic shift in black agriculture occurred in the decade between 1959 and 1969. According to the U.S. Bureau of the Census, in this short time span the number of black commercial farm operators in the South declined by 84.1 percent.[94] In contrast, white-operated commercial farms declined by 26.3 percent during the same period.[95] The number of black cotton farmers fell from 87,074 to 3,191 and tobacco farmers declined from 40,670 to 9,083. By 1974 cash grains and crops other than cotton or tobacco made up 56 percent of all black-operated commercial farms in the South[96] (see table 2.1).

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92. Beale, "The Negro in American Agriculture," p. 177.

93. Data on white farmers in 1959 was calculated by subtracting data on blacks (Ibid.) from 1959 Census data on all southern commercial farmers provided by John Blackledge, Branch Chief, Farm Economics, Agriculture Division, U.S. Bureau of the Census.

94. U.S., Department of Commerce, Bureau of the Census, 1969 Census of Agriculture, vol. II, chap. 3, p. 107; Beale, "The Negro in American Agriculture," p. 177.

95. Ibid.; also, see note 93.

96. 1974 Census of Agriculture, p. I-95.

TABLE 2.1

Black-Operated Commercial Farms in the South[a]

	1959[b]		1969[c]		1974[c]	
	No.	Percent	No.	Percent	No.	Percent
Cotton	87,074	56.4	3,195	13.0	1,569	8.1
Tobacco	40,670	26.4	9,093	37.0	6,963	36.0
Cash grain	2,285	1.5	1,965	8.0	4,332	22.4
Other	24,268	15.7	10,296	41.9	6,485	33.5
Total	154,298	(100%)	24,549	(99.9%)	19,349	(100%)

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[a] Farms with sales of $2,500 or more in a year.

[b] Data for 1959 include all nonwhite commercial farmers in the South, of whom approximately 98 percent were black. In addition to farms with sales of $2,500 or more, these data include farms with sales under $2,500 whose operators are not elderly and have little off-farm work. Beale, "The Negro in American Agriculture," pp. 171, 173, 179.

[c] Because of a significant undercount of small and black farmers in the 1969 and 1974 Agricultural Censuses (resulting from a change in Census methodology) these data may be undercounted by as much as one-third the true number of farmers (see app. C).

Sources: 1969 Census of Agriculture, vol. II, chap. 3, p. 107; 1974 Census of Agriculture, vol. II, pt. 3, p. I-95; Calvin Beale, "The Negro in American Agriculture," reprinted by USDA from The American Negro Reference Book, ed. John P. Davis (1966), p. 177.

Because of a significant undercount of small and black farmers in the 1969 and 1974 Agricultural Censuses (resulting from a change in census methodology) these data may be highly inaccurate.[97] The Census Bureau estimated that black farmers were undercounted by 53.3 percent in the 1974 census. Nonetheless, the data are instructive; even if adjusted upward by 100 percent, the 1969 data would reflect a decline of 68 percent in commercial black farm operators in the South between 1959 and 1969. The overall catastrophic loss of black-operated farms may be explained at least partially by the competitive disadvantages faced by black farmers, discussed in the following chapter.

Summary

Historically, while blacks played a significant role in agriculture, they were never permitted equal footing with whites to acquire and retain their own land. Freedom from slavery brought blacks only limited opportunities to purchase farmland, and their landholdings tended to be small. Credit was generally controlled by white merchants who required black farmers to cultivate cotton rather than diversify their crops. Intense working of small acreage without crop rotation brought diminishing returns from the mineral-depleted soil. When crises in the cotton market and the ravages of the boll weevil threatened southern agriculture, institutional economic support was extended to some white farmers -- but not significantly to blacks. Thousands of black farmers, unable to meet their mortgage payments, lost their farms. Many blacks forsook the severe hardships of agriculture to seek new job opportunities in the North.

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[97] See app. C.

Sharecropping, which should have been a stepping stone to land ownership, snared blacks in a position of inescapable social and economic inferiority. Fear and illiteracy rendered blacks easily exploited. Usurious interest rates defeated efforts towards advancement; hard work and initiative most often remained unrewarded. And lastly, government programs intended to cushion the suffering of the depression in general, and to assist struggling farmers in particular, did not provide blacks with benefits equal to whites.

Chapter 3

Current Conditions Affecting Black Farmers

Blacks currently comprise only 4 percent of this Nation's 6 million farm residents.[1] Between 1970 and 1980, the black farm population declined 65 percent compared to a 22 percent decline in the white farm population.[2] About 44 percent of the black farm population in the labor force is employed in agriculture, compared to 52.7 percent of the white population.[3] Those blacks who remain as farm residents in the agricultural labor force are disproportionately underrepresented as self-employed workers[4] and

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1. U.S., Department of Commerce, Bureau of the Census, and U.S., Department of Agriculture, Economic Research Service, Farm Population of the United States: 1980, Current Population Reports, Farm Population, Series P-27, no. 54, table 1, p. 7 (hereafter cited as Farm Population). Farm residents are those who reside in "places, which had, or normally would have had, sales of agricultural products of $1,000 or more during the reporting year." Farm Population, p. 1.

2. Ibid., p. 2.

3. Ibid., table 7, p. 12. In the South, the difference between blacks and whites is less distinct in this regard; of the farm population in the labor force, 41.6 percent of the blacks and 43.9 percent of the whites are employed in agriculture.

4. Self-employed workers are those "who worked for profit or fees in their own business, profession, or trade, or who operated a farm either as an owner or tenant." Farm Population, p. 19.

overrepresented as wage and salary workers. Of the total 1.7 million farm residents employed in agriculture, approximately 63 percent are self-employed, 20 percent are employed for wages and salaries, and 17 percent are unpaid family workers;[5] however, among black farm residents employed in agriculture, only 27 percent are self-employed, 67.5 percent are wage and salary workers, and 5 percent are unpaid family workers.[6]

In the South, blacks represent 10.4 percent of the employed farm population age 14 and over, and as much as one-quarter of all southern farm residents employed in agriculture for wage and salaries.[7] Yet, rapidly declining as farm operators,[8] blacks represent only 5.6 percent of the South's farmers.[9] About 85 percent of all black farmers are located in the South. The largest numbers are located in Mississippi, North Carolina, South Carolina, Texas, Alabama, Georgia, Virginia, Louisiana, Tennessee, and Florida (in declining order). Ohio and California are the two nonsouthern

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[5] Farm Population, p. 5.

[6] Ibid., table 10, p. 15.

[7] Ibid.

[8] The census defines farm operators as full owners, part owners (who operate leased land as well as their own farms) and tenants.

[9] U.S., Department of Commerce, Bureau of the Census, 1978 Census of Agriculture, vol. I, pt. 51, p. 209 (hereafter cited as 1978 Census of Agriculture).

States with the most black farmers.[10] (See appendix D.)

The median income of black farm families in 1978 was $7,584 compared to $17,323 for white farm families.[11] About 56 percent of the income of farm operator families comes from nonfarm sources.[12] In general, operators of small farms tend to work off the farm more than large farm operators;[13] yet blacks, who have disproportionately smaller landholdings, have less off-farm employment than whites.[14] In the 1974 Census of Agriculture, 32.7 percent of all southern commercial white farmers reported occupations other than farming as their principal occupation; however, only 23.1 percent of the black farmers so reported.[15] The unemployment rate for the black farm population is more than four times that for whites in the South, 9 percent as compared to 2.1 percent respectively.[16]

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[10] Ibid.

[11] Farm Population, table 12, p. 16.

[12] Ibid., p. 5.

[13] Ray Marshall and Allen Thompson, Status and Prospects of Small Farmers in the South, Center for the Study of Human Resources (Austin: University of Texas, October 1975), p. 29.

[14] Of commercial farmers in the South, 38.4 percent of the whites reported working off the farm, while 32.3 percent of the blacks so reported. Of those working off the farm, 64.9 percent of the whites reported working off the farm more than 200 days compared to only 47.9 percent of the blacks. U.S., Department of Commerce, Bureau of the Census, 1974 Census of Agriculture, vol. 11, pt. 3, p. I-95 (hereafter cited as 1974 Census of Agriculture).

[15] Ibid.

Higher rates of unemployment and lower rates of participation in off-farm employment for black farm operators may be a result of limited off-farm opportunities.

> [The lower rate of off-farm employment for black farm operators]... very likely reflects fewer opportunities for black farmers because of discrimination in nonfarm jobs, age,[17] education,[18] and other employment-related factors. Most important is the fact that the rapid growth in manufacturing employment in the rural South is taking place outside areas with heavy black population concentrations.[19]

Despite their reliance on farm income, due apparently to limited off-farm opportunities, only 41.5 percent of all farms operated by blacks in 1978 made agricultural sales of at least $2,500 annually[20] compared to 76.0 percent of all white farms.[21] Moreover, an additional 25,794 black-operated farms, which would have been counted as farms under the Census Bureau's 1969 definition of a farm,[22] were not counted under the 1978 census definition based on their low level of commercial productivity.[23] The ratio of excluded farms to counted farms was about 1 to 2 for blacks as compared to 1 to 5 for whites.[24] Thus, a disproportionate number of black-operated farms were not counted in the 1978 Census of Agriculture.

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[16] Farm Population, table 7, p. 12.

[17] Among commercial farm operators in the South the average age was 55.9 for blacks compared to 52.6 for whites. 1974 Census of Agriculture, p. I-95.

[18] In 1960 more than "40 percent of the nonwhite farm people [in the South] 25 years old and over did not complete as many as five years of school (compared with 8 percent of the white farm population)." Calvin L. Beale, "The Negro in American Agriculture," reprinted by USDA from the American Negro Reference Book, ed. John P. Davis (1966), p. 188.

[19] Marshall, Status and Prospects of Small Farmers in the South, pp. 29-30.

Narrowing the definition of a farm and eliminating the least productive farms "from data on which most agriculture policies are based" reflects an assumption that these farms have little agricultural impact or social significance.[25] However, these farms may actually represent the greatest employment and earnings potential available for many farm families with limited education

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20. 1978 Census of Agriculture, p. 209.

21. Ibid., p. 3.

22. Between 1959 and 1969, the Census Bureau defined a farm as (1) 10 or more acres producing at least $50 worth of agricultural products for sale, or (2) less than 10 acres producing at least $250 worth of agricultural products for sale. See app. A.

23. The 1978 definition of a farm excluded all farms with sales under $1,000. See app. B for further explanation.

24. See app. B.

25. Marshall, Status and Prospects of Small Farmers in the South, p. 19.

and nonfarm skills.[26]

> Small...farmers, even if they were not as efficient as larger ones, could remain in farming on a competitive basis so long as they could earn at least as much from their total family labor and nonlabor resources as they could in other jobs. Given the relatively low education levels of many small...farmers, it is clear that other opportunities for the labor they use on the farm may be quite low. To their money earnings, of course, must be added whatever personal satisfaction small farmers derive from leading the lives they prefer....[S]mall farmers might work for themselves for considerably less than [they would be willing to] in external labor markets....[27]

The social and economic costs of displacement of black farm families (for example, unemployment, welfare, urban crowding, alcoholism) are likely to be greater than the cost of assisting these families to be productive and self-sufficient on their own land.[28]

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[26] Ray Marshall, Small Farmers in Arkansas, Center for the Study of Human Resources (Austin: University of Texas, July 1976) p. 34.

[27] Ibid.

[28] Ibid., p. 6.

The adverse conditions which historically affected black farmers still exist to some extent today. Most significant is the competitive disadvantage faced by black farmers due to the relatively small size of their landholdings. While the average commercial black-operated farm in the South is 128 acres, the average white-operated farm is more than three times that size -- 428 acres.[29] The relatively small size of their landholdings combine with current economic conditions, governmental policies, and institutional practices to place black farmers at a competitive disadvantage with large farm operators and investors, most of whom are white. Economies of scale,[30] research and technology, tax benefits, government price and income supports, and commercial lending all militate against the survival of black-operated small farms.

Disadvantageous economies of scale prevent black farmers from reaping the benefits of many technological advancements. The cost of basic equipment minimally necessary to run a commercial farm is much greater in proportion to the number of acres of land held by the average black farmer than it is for white farmers. Because of their small landholdings, black commercial farmers invest in less machinery and earn smaller profits per farm than do white farm operators.[31]

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[29] 1978 Census of Agriculture, vol. I, pt. 51, pp. 118, 209.

[30] Expanding an operation, such as a farm, to optimal size maximizes efficiency, increasing output while cutting the average cost per unit of production.

However, existing economies of scale are not necessarily inherent in nature; rather, they derive from an emphasis on research (including that which is federally funded) and resulting technology that has been geared towards large scale farming:

> The economies of size might be as they are in part because of the past focus of public research on such things as large-scale equipment and technology based on inexpensive energy and inexpensive capital. If more research could be focused on making efficient complements of machinery for smaller farms and on energy-efficient practices, thus changing the cost curves, perhaps this would permit a more pluralistic farm sector in terms of size mixes and less concentration of production into one or two size categories.[32]

Technology and the overall impact of agricultural research have threatened the survival of small farms, according to a U.S. General Accounting Office (GAO) report issued in 1975 and a followup study conducted in October 1980.[33] Most agricultural research, much of which is conducted by public tax-supported land grant institutions, "has been directed toward the development of crops and livestock strains and machinery not particularly adaptive to the needs of small farmers."[34] To the contrary, this research is geared to capital intensive, large scale farming:

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[31] U.S., Department of Commerce, Land and Minority Enterprise: The Crisis and the Opportunity, prepared by Dr. Lester Salamon for the Office of Minority Business Enterprise (1976), p. 23 (hereafter cited as Land and Minority Enterprise).

[32] Structure of Agriculture, p. 67.

> ...USDA and the land-grant colleges have not made a concerted effort to solve problems impeding the economic improvement of small-farm operations. USDA and the land-grant colleges have not, to a great extent, 1) evaluated the economic and social impacts of production-efficiency research nor 2) determined the assistance that small-farm operators need to plan for and adjust to the changes brought about by such research....[35]

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[33] U.S., Comptroller General, Some Problems Impeding Economic Improvement of Small-Farm Operations: What the Department of Agriculture Could Do (RED-76-2, Aug. 15, 1975, hereafter cited as Some Problems Impeding Economic Improvement of Small Farm Operations). Also, U.S., General Accounting Office, Agricultural Research and Extension Programs to Aid Small Farmers (CED-81-18, Oct. 17, 1980, hereafter cited as Agricultural Research and Extension To Aid Small Farmers).

[34] Small Farmers in the South, pp. 55, 78, 79.

[35] Some Problems Impeding Economic Improvement of Small-Farm Operations, p. 8.

> ...[A]gricultural research and extension have provided the basis for a highly efficient, highly capitalized, and highly innovative agriculture.... At the same time, large-scale enterprises have been the principal beneficiaries of agriculture research and extension in the farm sector.[36]

"The black land grant colleges have a better record in helping poorer farmers....,"[37] but historically, discriminatory Federal funding has stifled the potential these institutions have for assisting black and small farmers. Though the traditionally black land-grant institutions have been in existence since 1890,[38] Congress appropriated no Federal funds for them to conduct agricultural research until 1972.[39] In contrast, traditionally

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36. Agricultural Research and Extension to Aid Small Farmers, p. 9.

37. Marshall, Small Farmers in the South, p. 78.

38. Act of Aug. 30, 1890, ch. 841, 26 Stat. 417, current version codified at 7 U.S.C. §§321-326, 328 (1976) provided for establishment of separate land-grant institutions for blacks.

39. The Act of Aug. 4, 1965, Pub. L. No. 89-106, §2, 79 Stat. 431 allowed for the appropriation of $8,883,000 in research monies to the 1890 colleges in 1972. This amount rose annually to $14,153,000 in 1978; Janie Fishback, budget analyst, Budget Division, Science and Education Administration, USDA, interview in Washington, D.C., Nov. 12, 1980 (hereafter cited as Fishback Interview).

white land-grant institutions, founded in 1862,[40] have received congressionally authorized Federal research monies since 1887.[41] In an attempt to compensate for this disparity in funding, USDA allocated Secretary's discretionary money to the black land-grant colleges between 1967 and 1971.[42] However, this funding amount, totaling $1,415,000 for the black land-grant institutions, was less than one-half of 1 percent of the congressionally authorized amount received by the white land-grant colleges during the same period.[43] In 1972 Congress began to appropriate annual research monies for the black land-grant institutions,[44] and in 1977 a formula tying the funding levels of the black land-grant institutions to the funding levels of the white land-grant institutions was enacted into law.[45] However, while the funding for black land-grant colleges has increased since 1972, these colleges remain considerably far behind in their capacity to impact on the problem of black farmers.

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[40] Morrill Act, ch. 130, 12 Stat. 503 (1862) (current version at 7 U.S.C. §§301-305, 307-308 (1976)) provided for the establishment of a college in each State emphasizing agricultural and mechanical arts, as well as instruction in classified, scientific, and military subjects. The first Morril Act did not contain specific provisions for the education of blacks.

[41] Hatch Act, ch. 314, 24 Stat. 440 (1887) (current version at 7 U.S.C. §§361a-361i (1976 and Supp. III 1979)).

[42] Fishback Interview. Such expenditure was authorized by the Act of Aug. 4, 1965, Pub. L. No. 89-106, 79 Stat. 431.

[43] Data entitled "Science and Education Administration Cooperative Research: Appropriation History," (1960-1980), provided by the Science and Education Administration, USDA.

[44] Authorized under Pub. L. No. 89-106.

Current research emphases on large-scale, capital intensive technology result in increased production keeping commodity prices lower than they might otherwise be. However, this situation creates a "treadmill" or "speed-up" effect, whereby farmers must increase production in order to simply keep pace and maintain their standard of living. Black small farm operators, who cannot afford, or use efficiently on small acreage, new large scale technology to increase their output, fall behind.[46] In an effort to compensate for the disadvantageous economies of scale related to their small farm operations and to maintain their profits, black commercial farmers continue to put a greater proportion of their land into crops than

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45. The Food and Agriculture Act of 1977 established an appropriation funding formula for agricultural research at black (1890) land-grant colleges and the Tuskegee Institute. The formula requires that these institutions receive not less than 15 percent of the amount received by the 1862 institutions under the Hatch Act. 7 U.S.C. §3222(a) (Supp. III 1979).

46. Some Problems Impeding Economic Improvement of Small-Farm Operations, p. 23. See also, "The Negro in American Agriculture," p. 180.

do white farmers.[47] Unfortunately, this historical need for black farmers to work marginal lands intensively, to increase production in the short term, runs counter to the need for conservation and land rotation practices which maintain the fertility of farmland over time.[48]

Black farmers are currently suffering from the impact of Federal research in the tobacco industry and the creation of mechanical harvesters and bulk storage. In 1969 more than one-third of all black commercial farmers concentrated their farming on tobacco, a traditionally, labor-intensive, small acreage crop.[49] However, a survey conducted in North Carolina, Georgia, Virginia, and South Carolina found that the number of farmers harvesting flue-cured tobacco dropped by almost 30 percent between 1972 and 1979. (Data by race were not available for 1979, but in 1972 about one-fifth of the surveyed farmers were black.) With the recent introduction of new technology, about 20 percent of the flue-cured tobacco in the surveyed area is being harvested by mechanical harvesters and 61 percent is being stored in bulk barns, enabling farmers who can afford to do so to expand their acreage. Those who cannot expand will find it increasingly difficult to compete.[50]

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[47] Research conducted by Duke University found that because blacks put a greater proportion of their land into cultivation, when computed on a per acre instead of per farm basis, blacks are returning a greater profit than whites. However, since their overall farm acreage is smaller than is that of whites, their total profits are still lower. Land and Minority Enterprise, p. 20.

[48] Ibid., p. 23.

[49] Marshall, Small Farmers in the South, p. 73.

> As flue-cured tobacco farming has become more mechanized through the use of mechanical harvesters and bulk farms, the number of tobacco farms has declined and the tobacco acreage per farm has increased. Large acreages of tobacco per farm are necessary to justify investment in labor-saving technology.[51]

The tax structure also militates against black farmers as a result of the size of their farms. Blacks and other small farmers, because they have little capital to invest and because they fall in low-income tax brackets, do not benefit from a tax structure which rewards capital investment. These farmers must get their start and often survive in farming by relying heavily on labor intensive crops and animals that require minimal capital outlays and machinery. However, tax subsidies provide incentives for large farmers and investors to utilize capital intensive technology in formerly labor intensive sectors of agriculture. Investment tax credits, accelerated depreciation, deductions on expenses and interest, and cash accounting[52] reap benefits for investors, particularly those in high income tax brackets.[53]

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[50] Verner Grise, Economics and Statistics Service, USDA, telephone interview, Oct. 2, 1981.

[51] Verner N. Grise, Trends in Flue-Cured Tobacco Farming, Agriculture Economic Rep. No. 470, Economics and Statistics Service, USDA, p. 2.

Small and minority farmers are competitively displaced, as tax incentives encourage large investors to transform labor intensive industries into capital intensive industries. For example, in addition to tobacco, hog farming has been traditionally labor intensive. However, now farmers raising hogs with human care must compete with capital intensive, automated confinement centers designed with climate control to speed weight gain, automated manure and feed handling to reduce labor, and constant administration of low levels of antibiotics to prevent disease in large herds of hogs kept in close quarters.[54] While 16.5 percent of the commercial farms in the South sell hogs and pigs, 33.3 percent of all southern black farmers are hog farmers.[55] "Over one-half of the hog farmers in the South report that hog sales are their principal source of farm income."[56]

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[52] "The cash accounting method 'enables costs to be deducted prior to the realization of the associated income....The tax losses generated by this...are not true economic losses but are artificial losses, which allow the postponing of taxes. They amount, in essence, to an interest-free loan from the government....Other provisions...enable an investor to convert ordinary income into capital gains income, taxable at a lower rate." Marshall, Small Farmers in the South, p. 70.

[53] Ibid. See also, Center for Rural Affairs, "Take Hogs, for Example. The Transformation of Hog Farming in America" (draft) January 1981, p. 19, (hereafter cited as "Take Hogs for Example.")

[54] Ibid., p. 5.

Confinement technology threatens to displace those minority and small farmers who utilize labor intensive technology and cannot benefit from tax laws which favor capital investment. Tax advantages are bestowed only on those with capital to invest, and particularly on those in high income brackets:

> A high-income investor in a hog factory using a combination of tax credits and deductions can recover one-half of his initial [personal] investment in the facility in the first year; over the life of the facility, depending on circumstances, he can recover from 80 to 100 percent of that investment in the form of reduced taxes.[57]

Government farm price and income support programs provide another mechanism by which benefits are bestowed on large farm operators, placing small farmers at a competitive disadvantage. Commodity programs initially arose out of a need to enhance the

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55. 1974 Census of Agriculture, p. I-96.

56. "Take Hogs for Example," p. 3.

57. Ibid., p. 19.

income of farmers struggling because food prices were depressed by the increased production resulting from new technologies. However, price and direct income support payments are closely tied to the volume of production, thus benefiting those who need them least--large farm operators.[58] According to a study of the distribution of direct income support payments under 1978 farm programs, of those farmers who did participate in support programs, (and most small farmers did not), the smallest 30 percent received less than 4 percent of all payments. The size of payments ranged from $365 for small farmers to $36,000 for farmers with more than 2,500 acres. The concentration of payments among a few large farmers was greatest in cotton and rice areas of the South.[59]

Thus, large farmers benefit most from farm commodity programs, which in turn enhances their ability to borrow and invest capital in more land and improved technology, resulting in increased production on their part and a progressively increasing disadvantage for small farmers. The U.S. Department of Agriculture, in its report on the structure of agriculture, acknowledged that these government programs may contribute to the loss of small farms.

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[58] Structure of Agriculture, pp. 101-02; Marshall, Small Farmers in the South, p. 73.

[59] Structure of Agriculture, pp. 101-02.

> The relevance of this for the structure of the farm sector is that the larger producers received greater payments and are likely the ones who can use the tax and other programs in combination to the greatest advantage. This, of course, would increase their competitive edge in bidding for, and being able to make payments on, additional land and machinery. Thus, the way payments were distributed by the Government perhaps contributed to the consolidation of smaller farms into fewer and larger farms.[60]

To remain in a competitive position, even the most well-established farmer must aggressively expand by using borrowed funds.[61] And it is especially true that black small farmers need borrowed operating capital to acquire land, machinery and equipment, livestock, and supplies if they are to survive in farming. However, according to the 1974 Census, while 33.4 percent of all Southern commercial farmers were in debt, only 26.7 percent of those who were black owed money. The average farm debt was $44,600, but for blacks it was only $12,888.[62] According to a study relating farm size and black displacement, "displacement of black operators on large farms, though less than on small farms, was high enough to make one suspect that inability to acquire capital was more important than concentration on small farms in determining the blacks survival rate in agriculture."[63]

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[60] Ibid., p. 103. See also, Willard Cochrane and Mary Ryan, American Farm Policy, 1948-1973 (Minneapolis: University of Minnesota Press, 1976), pp. 365-66, and Changing Character and Structure of American Agriculture, p. vi.

[61] Structure of Agriculture, p. 76.

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[62] 1974 Census of Agriculture, p. I-95. Farmers Home Administration officials pointed out that on a per acre basis (based on the average sizes of black and white-operated commercial farms in the South) the average debt per acre for blacks was only slightly lower than that for whites. (Meeting between Farmers Home Administration and Commission staff, Washington, D.C., Jan. 6, 1982.) However, a "per acre" comparison is not meaningful because small farms, regardless of their size, must have the basic farm buildings and equipment minimally necessary to operate and, often, a greater proportion of land on small farms is developed. Hence, the value of land and buildings operated by blacks, on a per acre basis, is 34 percent greater than that for whites. On the average, for each dollar in debt, black farmers had $4.77 worth of land and buildings as assets, while whites had only $3.70 worth. (1974 Census of Agriculture, pp. I-94, 95.) In other words, as potential loan leverage, on the average, blacks have assets in land and buildings valued at 29 percent above those for whites for every dollar in debt. This suggests that, given equal leveraging power, blacks are not receiving loans equal to whites.

[63] Virgil L. Christian, Jr., and Adamantios Pepelasis, "Farm Size and the Displacement of Black Farm Families in Southern Agriculture," in Human Resource Development in the Rural South, Center for the Study of Human Resources (Austin: University of Texas, 1971), p. 19.

Black farmers have difficulty obtaining necessary loans. The policies of traditional lending institutions generally do not serve the interests of small farmers.[64] For instance, many insurance companies, which finance the bulk of farm loans in this country, require loans to be at least $100,000. While commercial banks lend lesser amounts, they often require repayment within 5 years, a term too short for the average black land owner. Federal land banks tend to require amounts of collateral that are too great for blacks to qualify. And finally, financial institutions, including the Farmers Home Administration, have a reputation for discriminatory lending, which poses a real, as well as a psychological, barrier for blacks.[65]

The perception of discrimination in credit and land transactions seems to be widely held among blacks:

> There is ... the legacy of racial discrimination and distrust to combat.....[D]istrust by Negroes of white officials and of the white-controlled

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[64] Marshall, Small Farmers in the South, p. 58. Also, see Ray Marshall, Small Farmers in Arkansas, July 1976, p. 46.

[65] The Emergency Land Fund, "40 Acres and A Mule," vol. II, no. 10, October 1979, p. 9.

> credit structures seems to be widespread. Conditions vary greatly from county to county, but all too many Negroes are apprehensive of attempting to purchase land or to encumber the land they may already have.[66]

One survey of 147 black landowners in Tennessee found that 96 percent of those interviewed believed that black land loss was primarily due to illegal means; 88 percent attributed black land loss to two major factors: 1) the refusal of mortgage companies to make loans to blacks, and 2) persons in official capacities working together to gain possession of black-owned land.[67] This deep distrust, combined with lack of knowledge regarding possible loan programs, prevents blacks from utilizing much needed lending sources. For example, in another survey of black landowners in the South, fewer than 15 percent of the respondents had ever applied for agricultural loans through the Farmers Home Administration -- the institution with loan programs created to meet most appropriately the needs of these struggling farmers.[68]

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[66] Beale, "The Negro in American Agriculture," p. 196.

[67] Leo McGee and Robert Boone, "A Study of Rural Landownership, Control Problems, and Attitudes of Blacks Toward Rural Land," in The Black Rural Landowner-Endangered Species, p. 62.

[68] Emergency Land Fund, The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States (January 1981), p. 363, (hereafter cited as The Impact of Heir Property).

In addition to credit, black farmers historically have had difficulty gaining access to agricultural land.

> With most land in the hands of white owners, Negroes have often found it difficult to be considered as potential buyers, unless the market was poor. For example, in the heart of the tobacco country in eastern North Carolina it was not uncommon in the 1950's for auctions of farmland to begin with a statement that bids would be received from white persons only.[69]

The legacy of this discrimination persists, particularly in regard to the rental of land, an important means for blacks to expand their farms. "...[S]ome small farmers have experienced difficulties in obtaining and keeping rental agreements with land owners who have turned over much of the prime land to larger operators....For black farmers, the problems are compounded by racial discrimination."[70]

The problems which blacks face in obtaining credit and developing their land are exacerbated by their traditional ownership of heir property--land inherited without a will. Land passed down through generations without the existence of wills frequently is conveyed among an extended family of cousins, aunts, and uncles in a complex

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69. Beale, "The Negro in American Agriculture," p. 196.

70. Marshall, Small Farmers in the South, pp. 59-60. Also, see Land and Minority Enterprise, pp. 13-14.

division of ownership. No one individual holds title to the heir property. Often, heirs move out of the area; sometimes their whereabouts are unknown.

To determine the impact of heir property on black landownership, Congress in 1978 authorized the U.S. Department of Agriculture to study the problem,[71] and the Emergency Land Fund[72] (ELF) contracted to perform the research. Through a sample survey, ELF found that 27 percent of all black-owned land parcels in the Southeast are heir propery . An average of eight people jointly own each of these parcels, and an average of five out of these eight owners live outside of the Southeast.[73]

Heir property is particularly susceptible to partition and tax sales. Partition sales result when one or more heirs wishes to sell his or her share of the property, but the heirs are unable to reach a consensus as to how the property can be divided equitably in order to sell a share. Upon being petitioned by one of the heirs, the court may auction off the entire piece of land, and if none of the heirs can afford to purchase the entire parcel, which is often the case, the land is lost to an outside bidder.[74] In some cases, the land is bought below market price by a speculator who initially urged one of the heirs to sell his/her interest.

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[71] The Housing and Community Development Amendments of 1978, Pub. L. No. 95-577, §509, 92 Stat. 2114.

[72] A private, non-profit organization founded in 1971, the Emergency Land Fund addresses the problems of black land loss by providing outreach, technical assistance, and legal support to black farmers.

[73] The Impact of Heir Property, p. 62.

Thus, heir property may fall prey to "sharp" practices, "practices which are, although technically legal, clearly unscrupulous."[75] The usual such practice involves purchasing one heir's interest in a property with the intent of ultimately forcing all of the heirs to a partition sale.[76] "...[T]he purchasers at these [partition and] tax sales are almost always white persons, frequently local lawyers or relatives of the local officials, who make it their business to keep abreast of what properties are going to auction and who attend the auctions prepared to buy."[77] Attorneys, seeking legal fees, have also been known to instigate

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74. In Alabama, on July 17, 1979, a new law was enacted allowing heir owners to buy out the interest of a departing heir by purchasing the heir's share at a price determined by a court appointed appraiser. Under this law, a partition sale results only if none of the heirs wish to purchase the departing heir's interest, or if the heirs fail to meet the deadline for payment. Ala. Code, §35-6-100 (Supp. 1980).

75. The Impact of Heir Property, p. 45.

76. Ibid.

77. Robert S. Browne, Only Six Million Acres: The Decline of Black Owned Land in the Rural South (New York, N.Y: Black Economic Research Center, 1973), pp. 53, 55.

partition sales.[78]

Tax sales occur when landowners fail to pay property taxes. Heir property is particularly susceptible to conflict or confusion regarding tax responsibility. Heirs may have different sized shares in the property and different interests in maintaining it. Often, one heir occupies the property and pays the taxes. Upon his or her death, or in the event that this heir fails to keep up on tax payments, confusion among the other, often widely dispersed, heirs may immobilize them from taking the action necessary to save the land.

Heir property is rarely improved or developed, due to the threat of partition sales and the difficulty of obtaining credit on partial interests in the property. "In fact, a third more heir than non-heir property is not being used at all."[79]

A historical distrust of the legal system and of writing wills and misconceptions regarding the rights of heirs combine to perpetuate the tradition of heir property among blacks. "Estate planning through testacy was not incorporated into black thought because blacks felt that they could not trust or rely on a legal system which had traditionally failed to protect their interests."[80] The Emergency Land Fund found that most landowners in their survey mistakenly believed that an heir's interest cannot be sold without the consent of all the heirs, and that heirs in possession of the land have superior rights to the land. Based on ELF's survey, 89 percent of the black landowners in the Southeast can be expected to die without making wills.[81]

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[78] The Impact of Heir Property, pp. 45, 291. According to the Emergency Land Fund, judges are believed to have benefited from partition sales also. For example, one probate judge who "entered public office owning an insignificant amount of land," according to ELF, now owns an "estimated 15,000 acres in a county that is eighty percent black."

[79] Ibid., p. 75.

Summary

Historically, racial discrimination in credit and in the selling of land has resulted in smaller and less productive landholdings for blacks. These disadvantages have been compounded by current lending practices, research, technology, commodity price and income supports, and tax structures which are geared to benefit large farm operations. Thus, black small farm operators have been placed in increasingly disadvantageous and noncompetitive positions vis-a-vis predominately white large farm operators. The disparities resulting from these structural inequities are further exacerbated by a history of racism, distrust of the legal system and lending institutions, and the tradition of heir property.

The effects of historical discrimination and structural inequities could result in the extinction of black farms in this country if immediate measures are not taken to counter the biases presently built into the system. While changes need to be made in priorities for research and technology as well as in the tax structure and government farm subsidies, this report focuses on the more immediate benefits which could derive from programs administered by the Farmers Home Administration of the U.S. Department of Agriculture.

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[80] Ibid., p. 115.

[81] Ibid., pp. 114, 115.

Chapter 4

Farmers Home Administration Programs

The Farmers Home Administration (FmHA), within the U.S. Department of Agriculture, has the potential for providing the immediate assistance so urgently needed by black farm operators to prevent the further loss of their land. The structure, historical mission, and purpose of FmHA make this agency particularly capable of such a task.

The Farmers Home Administration is a highly decentralized agency comprised of a national office, 46 State offices, 302 district offices, and 1,800 county offices located in 50 States, the Pacific Trust Territory, Guam, Puerto Rico, and the Virgin Islands. FmHA employs approximately 8,000 permanent full-time Federal staff nationwide.[1] Reporting to USDA's Under Secretary for Small Community and Rural Development, the Administrator for FmHA coordinates the management of FmHA programs, establishes policies and regulations, appoints State directors and allocates funds to the States. State directors provide overall direction at the State level, while district directors provide supervision to county offices. The county offices are the primary point of contact for most rural individuals and organizations seeking FmHA assistance, and it is at the county level that most individual loans are approved or disapproved.[2]

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[1] U.S., Department of Agriculture, Farmers Home Administration, "A Brief History of the Farmers Home Administration" (January 1981), p. 1.

The Farmers Home Administration has served as a primary source of agricultural lending for limited resource and low-income farmers since its inception.[3] Created in 1935 as the Resettlement Administration,[4] it emerged as part of the New Deal to assist the rural poor to "re-establish themselves on a self-supporting basis," by providing more than 300,000 supervised short-term loans, often supplemented by grants, in a 2-year period.[5]

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2. U.S., Department of Justice, Civil Rights Division, Evaluation of Title VI Enforcement in the Farmers Home Administration of the U.S. Department of Agriculture, (November 1980), pp. 5-7 (hereafter cited as Evaluation of Title VI Enforcement).

3. H.R. Rep. No. 95-986, 95th Cong., 2nd Sess., reprinted in [1978] U.S. Code Cong. & Ad. News 1106, 1121 (hereafter cited as H.R. Rep. No. 95-986).

4. The Resettlement Administration was established as an independent agency in 1935 and assigned to the Department of Agriculture in 1937. U.S., Department of Agriculture, Farmers Home Administration, "A Brief History of Farmers Home Administration," 1980, reprinted in Agriculture, Rural Development and Related Agencies Appropriations for 1981: Hearings before the Subcommittee on Agriculture, Rural Development and Related Agencies of the House Committee on Appropriations, 96th Cong., 2d sess., pp. 110, 111 (1980) (hereafter cited as "A Brief History of FmHA").

5. Ibid.

> Supervised loans were part of a government-wide effort to help needy rural people....Each loan was based on a farm and home management plan worked out by county, farm, and home supervisors in cooperation with the borrowing family. The plans were designed to ensure the use of good farming practices and to fit the needs of the families taking part in the program.[6]

The concept of government supervised credit was reinforced in 1937 with the enactment of the Bankhead-Jones Farm Tenant Act,[7] which authorized 40-year loans for farmers unable to obtain credit elsewhere to buy land or improve their farms or homes. At this time, the Resettlement Administration was renamed the Farm Security Administration (FSA), and it continued its supervised credit program to family farmers, as well as "Resettlement projects to establish new farms and communities, services in group medical care, agricultural cooperatives, migratory labor camps, and other social and economic programs."[8] Between 1937 and 1941 the FSA also made

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6. Ibid.

7. Bankhead-Jones Farm Tenant Act, Ch. 517, 50 Stat. 522 (1937).

8. "A Brief History of FmHA", p. 112. The Farm Security Administration's jurisdiction was further expanded in 1942, gaining full responsibility for administering the Water Facilities Act of 1937 by making loans to individuals and associations for water systems in 17 western States suffering water shortages.

more than 13,000 loans to tenant families for the purchase of farms.[9]

In 1946 Congress passed the Farmers Home Administration Act,[10] combining the FSA and the Emergency Crop and Feed Loan Program into the newly created Farmers Home Administration and giving FmHA the authority to insure loans made by banks, other agencies, and private individuals, in addition to making direct government loans.[11] In 1947 Congress began to broaden significantly the range of FmHA's services to rural communities. Legislation enacted over the next 30 years has expanded FmHA's authority to provide, in addition to farmer programs, rural loans for individual home ownership, home repairs, construction of rental housing, self-help housing, farm labor housing, water and waste disposal systems, community facilities, business and industry, and area development.[12]

Today, the Farmers Home Administration is the principal public lending agency for farmers and rural communities.[13] In fiscal year 1980, the agency obligated almost $13 billion, of which $6.3

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9. Ibid.

10. Farmers Home Administration Act of 1946, ch. 964, 60 Stat. 1062.

11. "A Brief History of FmHA," p. 112.

12. Ibid., pp. 113-162.

13. U.S., Department of Agriculture, Structure of Agriculture (January 1981), p. 113 (hereafter cited as Structure of Agriculture).

billion were farm loans.[14] The agency obligated almost $7 billion in farm loans in fiscal year 1981.[15]

Traditionally, farm loan programs were limited to individual family-size farms. In 1978 amendments to the Consolidated Farm and Rural Development Act[16] extended eligibility for FmHA loans to private corporations, cooperatives and partnerships, if they are controlled by family farmers and ranchers engaged primarily and directly in farming or ranching. However, the intent of this change in eligibility criteria was not to reach out to larger, nonfamily farms which had previously been excluded, but to "bring eligibility requirements more in line with the current trend, whereby farm cooperatives, partnerships, and corporations are established to own or operate family size farms and ranches."[17]

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[14] Dwight Calhoun, Acting Administrator, FmHA, testimony before the U.S. House Committee on Appropriations, Subcommittee on Agriculture, Rural Development and Related Agencies, Mar. 19, 1981, p. 3.

[15] Computer data provided by USDA, FmHA Management Information Systems Division, entitled "Distribution of Loans Made by Six Specified Types of Race or Ethnic Group," Fiscal Year 1981. As of this writing, the projected fiscal year 1982 budget on FmHA farm loans is in a state of flux.

[16] Agriculture Credit Act of 1978, Pub. L. No. 95-334, tit. I, 92 Stat. 420.

[17] H.R. Rep. No. 95-986, p. 6.

Historically, Congress has intended the Farmers Home Administration to be the "lender of last resort"--a source of financing for those borrowers who cannot obtain credit elsewhere.[18] This social function distinguishes FmHA from commercial lenders that operate to minimize their financial risks and maximize their profits. The fact that the public, through its taxes, assumes some degree of the risk is a reflection of the social value placed on maintaining a strong and diverse agricultural sector.[19]

According to a recently published USDA report, as a public lender, FmHA's role should be consistent with the twin goals of achieving efficiency in agriculture and slowing trends toward concentration of agricultural production in the hands of fewer and fewer producers.[20] Thus, the USDA report finds that "FmHA has no compelling reason to provide loans to [very large producers], certainly not those with annual sales above $200,000,"[21] and probably not those with sales over $100,000. The public interest is not served by subsidizing farms that are larger than necessary to be efficient and that reduce participation and competition in agriculture by consolidating smaller farms.[22] Furthermore, large farms are assured "fair and competitive access to funds through private lenders."[23]

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[18] Structure of Agriculture, p. 118.

[19] Ibid., pp. 119, 123.

[20] Ibid., p. 121.

[21] Ibid.

[22] Ibid., pp. 120-121, 123.

Assuring that farms of moderate size receive needed funds, according to the USDA report, is "consistent with the goals of efficiency, preserving a pluralistic agriculture for resiliency and future flexibility, providing economic opportunity for more people, and ultimate food security."[24] Under these goals, an important segment of the farm population in need of FmHA assistance are "limited resource farmers",

> [whose farms] are not large enough in their operations and sales to generate adequate family incomes, need more resources to be efficient, and are at a competitive disadvantage relative to larger farmers....[I]t is this group of small and medium-sized farms which, if viable and efficient, could most effectively counter or at least moderate the trend toward concentration in the farm sector, and assure the pluralism and diversity necessary for a robust, competitive and more shock-resistant agriculture.[25]

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23. Ibid., p. 119.

24. Ibid., p. 120.

25. Ibid., p. 119.

Rather than providing public credit to very large farmers, the USDA report states that "[t]he subsidies could be better spent helping small farmers, minorities and others increase their stake in society by gaining access to the land."[26] And for those farms with sales under $5,000 annually, which are "genuinely poor and have few off-farm employment opportunities....FmHA assistance might be the best means, economically and socially, of poverty relief."[27]

> Where supervised credit would permit the development of a viable supplementary enterprise that would efficiently employ otherwise under-used resources, FmHA assistance would appear to be in the public interest....Since the aggregate resources involved are small, the overall impact on the efficiency of resource use would be minimal.[28]

In 1978 Congress created limited resource loans for farmers who need special assistance.[29]

> Included are those with limited resources, beginning farmers, and owners or operators of small or family farms with a low income, such as

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[26] Ibid., p. 123.

[27] Ibid., p. 119.

[28] Ibid.

[29] Agriculture Credit Act of 1978, Pub. L. No. 95-334, §113, 92 Stat. 424, codified at 7 U.S.C. §1934 (Supp. III 1979).

> young farm families, [who] have had an opportunity to buy [their] first piece of land, small minority farmers, especially in the South and Southwest and many Indian farmers.[30]

FmHA acknowledges that these small family farmers and minorities have been unable to obtain sufficient credit in the past.[31] Under limited resource loan conditions, low-income farmers are eligible for farm ownership and operating loans under special terms and at reduced interest rates.[32]

As a lender of last resort, the goals of the Farmers Home Administration appear to be clear. However, regulations intended to implement these goals leave room for a wide range of subjective interpretation.

For example, to ensure that FmHA serves only those who are unable to obtain loans from other sources, "credit elsewhere" tests

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30. H.R. Rep. No. 95-986, p. 11.

31. Gordon Cavanaugh, Administrator, Farmers Home Administration, USDA, statement before the U.S. House Committee on Appropriations, Subcommittee on Agriculture, Rural Development and Related Agencies, 96th Cong., 2d sess., Agriculture, Rural Development and Related Agencies Appropriation for 1981, pt. 3, p. 97 (hereafter cited as Cavanaugh Testimony).

32. Farm ownership and operating loans are made at interest rates not more than the cost of money to the government. Limited resource loans are made at interest rates below cost to the government.

are applied to loan applicants.[33] However, the lack of alternative credit may be self-certified by the applicant or based on the judgment of the county supervisor.[34] The decision to require documentation is discretionary and prone to influence by subjective factors, such as personal relationships and status in the community. In a study of one farm loan program, the General Accounting Office (GAO) found that in a significant number of instances, "credit elsewhere" tests were never applied and many FmHA borrowers could have found sources of credit other than FmHA.[35]

The problem of subjectivity permeates much of the FmHA loan decision process. Evaluating another loan program, GAO found that "FmHA lacks specific criteria for approving loans; consequently decisions made by local FmHA county supervisors [in this case concerning housing loans] are somewhat subjective and result in applicants not being treated fairly and consistently...."[36] Upon reviewing 200 rejected and approved housing loan files in 15 county offices, GAO found "various disparities in the criteria adopted." Variations were found in job tenure requirements and verification of credit-worthiness. It is likely that determinations of eligibility for farm loans are equally subjective, for example, with respect to required farm experience, credit-worthiness, property appraisals, and viability of farm plans. Lack of specific criteria for loan determinations potentially enhances FmHA's flexibility and ability to serve clients. It also creates loopholes which allow for discriminatory treatment.

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[33] Structure of Agriculture, pp. 119, 121; U.S., General Accounting Office, Farmers Home Administration and Small Business Administration Natural Disaster Loan Programs: Budget Implications and Beneficiaries (Aug. 6, 1979), p. v. (hereafter cited as Natural Disaster Loan Programs).

[34] 7 C.F.R. §§1941.6, 1943.6, 1943.56 (1981).

[35] Natural Disaster Loan Programs, pp. 26-37. Regulations recently published governing FmHA's disaster and economic emergency loans have been revised to require stricter "credit elsewhere" tests. 7 C.F.R. §1945. 56(b), 1945.105 (1981).

FmHA regulations governing eligibility for low-interest limited resource loans also leave much room for interpretation. They describe in general terms the profile characteristics of a limited resource farmer.

> [A] farmer or rancher [who] is an operator of a small or family farm (a small farm is a marginal family farm) including a new operator, with a low income who demonstrates a need to maximize farm or ranch income....must meet the eligibility requirements for a farm ownership or operating

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[36] U.S., Comptroller General, "Stronger Federal Enforcement Needed to Uphold Fair Housing Laws" (CED-78-21, Feb. 2, 1978), p. 30.

> loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.[37]

Despite this lengthy description of a limited resource farmer, these regulations do not provide specific eligibility criteria concerning farm size, income, or assets; ultimately the eligibility determination is subjective.

To the detriment of black farmers, FmHA regulations do not require outreach.[38] However, the significance of outreach is recognized in USDA's Administrative Regulations, which state:

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[37] 7 C.F.R. §1941.4(g) (1981).

[38] Id. §1910.9 (1981). The State office may provide materials and information for outreach, but this is not required.

> "Each Agency Head is responsible for making sure that all eligible persons, particularly minorities and women, are adequately informed of and encouraged to participate fully in USDA programs, the USDA policy of nondiscrimination and the procedures for filing a complaint."[39]

Several FmHA procedures, if followed, should be particularly beneficial to black small farm operators. For example: 1) "An explanation of the type of assistance available should be given whenever it is not clear what types of loan or grant will meet the applicant's needs. The employee receiving the application will make sure that it is properly completed, dated, and signed, and will give whatever assistance is necessary";[40] 2) When the farm home plan indicates that the applicant has insufficient income, "alternative plans of farm operation will be considered to attempt to overcome the problem";[41] 3) Management assistance will be provided, including credit counseling, farm operation planning, record keeping assistance, borrower supervision, and analysis of borrower operations.[42] These types of assistance are particularly needed by black farmers who may be disadvantaged as a result of their limited education and training.

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[39] U.S., Depart. of Agri. Admin. Reg. 9 §24 (1976) (hereafter cited as 9 AR) (printed as appendix 1.4 to U.S., Department of Agriculture, Office of Equal Opportunity, Title VI Enforcement Plan for the Department of Agriculture, (undated), p. 82 (hereafter cited as Title VI Enforcement Plan).

[40] 7 C.F.R. §1910.3(c) (1981).

[41] Id. §1910.7(b).

[42] Id. §1924.51, .55-.60.

The historical circumstances that have militated against survival of black farms, as well as the government programs, including technological research and commodity supports, which have served to place black farmers in further disadvantageous, noncompetitive positions, have left black farmers in particular need of the assistance which the Farmers Home Administration was created to provide.

Serious questions have been raised, however, concerning the appropriateness of many of FmHA's loans, and criticism has focused on the assertion that the original intent and purpose of FmHA programs has been diverted. Critics suggest that the greatest beneficiaries of FmHA programs are often farmers who are not in the greatest need and who, in fact, could obtain financing elsewhere if they were required to do so. The result of this alleged misallocation of funds would be the depletion of resources available for those most in need and the increasingly disadvantaged position in which struggling farmers are placed as they must compete with better-off farmers who succeed in obtaining FmHA financing.[43]

Black farmers who attempt to utilize FmHA resources believe they often encounter special difficulties. In 1980, 85 equal opportunity complaints were filed concerning farm operating and farm ownership loans.[44] In a complaint filed in February 1980 against a Farmers Home Administration office in North Carolina, black farmers alleged that they suffer from a broad range of discriminatory actions, and are subjected to disrespect, embarrassment, and humiliation by FmHA officials.[45] Complainants claim that they are often denied the opportunity to submit loan applications; that the amounts of loans awarded are always less than requested; that often they do not even receive the full amount awarded; that loan repayment schedules are accelerated without explanation; that loan payments are applied to the wrong accounts (i.e., to pay off low-interest rather than high-interest loans); and that creditors and other businesses are routinely contacted by the county FmHA Office and informed that no loans will be made to these black farmers, thereby preventing them from obtaining other credit, goods, and services needed to continue their farm operations.[46]

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[43] "FmHA's New Clientele," The Small Farm Advocate, issue no. 7 (Winter 1980/81), pp. 1-5. Also, see Hudson v. FmHA, Civ. Act. No. Ac. 79-216, U.S. Dist. Ct. for the North. Dist. of Miss., complaint filed Dec. 21, 1979, at 13.

> There is a pattern and practice of Black farmers being foreclosed, liquidated, or being forced to

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[44] U.S., Department of Agriculture, Office of Equal Opportunity, Equal Opportunity Report: USDA Programs--1980, p. 7 (hereafter cited as Equal Opportunity Report: USDA Programs--1980).

[45] John Garland, attorney for the complainants, letter to James Frazier, Director, Office of Equal Opportunity, USDA, Feb. 8, 1980 (copy in USCCR files).

[46] Ibid. FmHA officials deny all charges of discrimination against this county office. (Meeting between Farmers Home Administration and Commission staff, in Washington, D.C., January 6, 1982.)

> sell their property by the county supervisor.... These farmers are never informed of debt restructuring loans or other FmHA programs for persons who are delinquent... Nor are they informed of the proper procedure that FmHA must go through in foreclosing on secured interests.
>
> Black farmers are told that if they sell out, the FmHA or county supervisor, personally, will give them money to build homes somewhere other than Gates or Hertford County. Moreover, when such a farmer does sell out, a purportedly public sale is held. All property sold is usually purchased by a select group of White landowners or timber entrepreneurs in the two counties.[47]

Initiated as a result of the above-mentioned complaint, an investigation conducted by USDA's Office of Equal Opportunity (OEO) confirmed that there were equal opportunity violations at this FmHA office, including:[48]

-- discrepancies in the real estate appraisal of farm land owned by blacks (used to determine potential collateral);

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[47] Ibid.

[48] USCCR staff review of USDA/OEO compliance review file, "FmHA-7600-Gates and Hertford counties, North Carolina - Special Projects" (hereafter cited as FmHA--Gates and Hertford Counties Compliance Review), Washington, D.C., Apr. 23, 1981. See also, Equal Opportunity Report: USDA Programs-- 1980, p. 30, and chap. 5 of this report.

- -- inordinate waiting periods between application and loan approval for blacks;
- -- absence of deferred loan payment schedules for blacks;
- -- requirements that some blacks agree to voluntary liquidation as a condition to obtaining loans; and
- -- disparities in the number and amounts of loans made to blacks.

Data gathered in the OEO investigation indicated that the rural population in the area served by this FmHA office was 54.8 percent black, while blacks received only 28.7 percent of the number of FmHA farm loans awarded during 1979.[49] Information on limited resource loans was not displayed on information racks, and black farmers in Gates County were found to be unaware of limited resource assistance available through FmHA.[50]

OEO investigators interviewed six local black farmers working in the area served by this FmHA office. Each of these farmers had 150 or more acres of land and more than 10 years of farm experience; none had knowledge of FmHA's economic emergency loan program. One black farmer stated that he had asked the county supervisor whether FmHA administered any loan program which might assist persons who were experiencing economic hardships as a result of high unexpected production costs. He was told that such a program did not exist and advised to secure off-farm employment. In contrast, the investigators found that a 21-year-old white male with no land received a $137,000 economic emergency loan from this local FmHA office to purchase a 30 acre farm in 1979 and an additional FmHA economic emergency loan of $110,000 in 1980.[51]

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[49] FmHA--Gates and Hertford Counties Compliance Review. This information was included in the investigation report, but it was not considered a finding of discrimination. OEO has not determined what the eligible population should be for farm loans or what proportion of loans should go to blacks, leaving this determination to FmHA. According to FmHA officials, for civil rights analysis, only those farmers with annual sales over $2,500 should be considered eligible for FmHA loans. (According to these officials, 16 percent of the farmers with sales over $2,500 in Gates and Hertford counties are black.) (Meeting between FmHA and Commission staff, Jan. 6, 1982.) FmHA regulations, however, do not limit loans to farmers with sales above $2,500. Thus, the Commission believes that this is an unnecessary statistical limitation which adversely affects black farmers. (See further discussion of statistical data bases in this Chapter.)

[50] Ibid.

Another complaint against the Farmers Home Administration, filed in U.S. District Court in December 1979, alleged discrimination against black farmers in Mississippi:

> FmHA pursues a racially discriminatory policy and practice in awarding, supervising and servicing farm loans which policy and practice have served to foster a radical decline in the number of Black farmers and Black owned farm acreage. During the twenty-year period between 1954 and 1974, Black farmers in the State of Mississippi declined from 46.8 percent to 15.2 percent of the total farm operators. Between 1954 and 1974, Black farmers in Mississippi lost farm land in

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[51] Ibid.

> the amount of 140,881 acres per year. Between 1954 and 1974, Black owned farm acreage declined from 18.0 percent to 5.8 percent of the total farm acreage.[52]

Among the complainants' specific allegations were the following:

- -- FmHA pursues a policy of instituting foreclosures against delinquent small and Black farmers rather than refinancing their loans;
- -- FmHA pursues a policy and practice of making loans to qualified small and Black farmers which amount to only a small portion of the demonstrated financial need while making loans of 100 percent of the demonstrated financial need to large white farmers;
- -- FmHA pursues a policy and practice of denying loans to Black and small farmers to lease land and of encouraging delinquent Black and small farmers to discontinue farming and sell their land and equipment.[53]

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[52] Hudson v. FmHA, note 43 above, complaint at 8-9. The case was dismissed for failure to exhaust administrative remedies, but could have been reopened after exhaustion of the administrative complaint process. However, before this process was completed one of the plaintiffs found it necessary to sell his farm and the other obtained off-farm employment. Thus, the case was dropped. (Isaiah Madison, attorney, telephone interview, Nov. 13, 1981.)

[53] Ibid., pp. 6-7.

Specific grievances were also expressed against FmHA county committees, who determine eligibility of applicants and loan amounts to be awarded, based on information and recommendations provided by FmHA staff.

> -- A large number of FmHA County Committees, including the Leflore County and Marshall County Committees, are staffed with persons who are biased against Black and/or small farmers and are, therefore, incapable of objectively evaluating their loan applications.[54]
>
> -- The Marshall County FmHA County Committee pursues a policy and practice of making low-interest loans to large financially secure White farmers who do not qualify for such loans. This policy and practice is racially discriminatory and reduces or depletes loan funds which would otherwise be available to Plaintiff...as a Black farmer and other members of Plaintiff's Class.[55]

In March 1981 Black farmers from Arkansas, Mississippi, and Tennessee held a 21-day sit-in at a Tennessee county FmHA office to protest what they perceived to be discrimination by FmHA. They expressed concern with "cronyism and capricious loan evaluations"[56] and focused their protest initially on the following selected grievances:

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[54] Ibid., p. 8.

[55] Ibid., pp. 13, 14.

-- excessive delays in loan approvals: frequently loans are not approved until July or August, after planting season, making it difficult to repay the loans;

-- insufficient and inadequate loans, making it difficult to accomplish necessary tasks well, and hence, more difficult to repay loans;

-- demand for proportionately greater amounts of collateral for black farmers than for whites;

-- refusal to extend credit to beginning black farmers.[57]

Subsequent to the demonstration, USDA's Office of Equal Opportunity conducted a civil rights compliance investigation of this local FmHA office. There were no findings of discrimination.[58]

The perceived and perhaps actual resistence to civil rights compliance in the Farmers Home Administration may be explained, at least in part, by low rates of minority employment in decisionmaking positions. Blacks comprise 7.3 percent of FmHA's total work force, and 4.4 percent of employees at grade levels GS-11 or above.[59] Moreover, the proportion of loan specialists who are black actually declined from 6.8 to 4.8 percent between 1977 and 1980.[60]

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[56] Tom Burrell, sit-in participant, telephone interview, May 14, 1981.

[57] Ibid. See also, ruralamerica, vol. 6, no. 2, April-May 1981, pp. 1, 4.

[58] Wilbert Williams, FmHA team leader, Compliance Division, Office of Equal Opportunity (OEO), USDA, interview in Washington, D.C., Aug. 21, 1981. The OEO investigation report was not available at the time of this writing.

Also of concern is the racial makeup of FmHA county committees. "(C)omposed of three individuals residing in the county, at least two of whom are farmers..., (t)he committee determines the eligibility of individual applicants and the limits of credit to be extended."[61] Committee members are nominated by FmHA county supervisors and appointed by FmHA State directors.[62] In 1980, 4.3 percent of all FmHA county committee members were black, down from 7.2 percent in 1979. From 1979 to 1980, the number of black committee members dropped from 427 to 257, a 39.8 percent decline in black participation in 1 year, while total committee membership rose from 5,863 to 5,966.[63] The loss of black committee members appears most dramatic at the State level, where, for example,

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[59] Hispanics comprise 1.6 percent of FmHA's total work force; American Indians, 0.59 percent; and Asians, 0.9 percent. These figures compare with a minority employment rate of 12 percent for USDA and 23.5 percent for the entire Federal work force. USDA's computer data entitled "EEO Tracking Reports as of 9/20/80--Grade Distribution Summary" (PFT-GS, World Wide), pp. 20, 162.

[60] USDA, Office of Equal Opportunity, Equal Opportunity Report: USDA Programs 1979, pp. 26, 28 (hereafter cited as Equal Opportunity Report: USDA Programs--1979).

[61] Equal Opportunity Report: USDA Programs--1980, p. 53.

[62] USDA, Citizens Advisory Committee on Equal Opportunity, Report to the Secretary (December 1980), p. 14.

[63] Equal Opportunity Report: USDA Programs -- 1980, pp. 53, 73-76. Neither OEO nor FmHA has an explanation for the decline in black committee membership.

Table 4.1

Number of Black FmHA Committee Members
(1979 and 1980)

	1979	1980	Percent change
Alabama	37	19	-48.6
Florida	14	10	-28.6
Georgia	61	24	-60.7
Mississippi	48	21	-56.3
North Carolina	47	31	-34.0
South Carolina	27	19	-29.6
Tennessee	33	2	-93.3
Texas	33	18	-45.5
Virginia	49	29	-40.8

Source: U.S., Department of Agriculture, Office of Equal Opportunity, Equal Opportunity Report: USDA Programs--1980, pp. 53, 73-76.

Tennessee lost 93.3 percent of its black committee members, Georgia, 60.7 percent; Mississippi, 56.3 percent; and Alabama, 48.6 percent[64] (see table 4.1). The decline of black representation on FmHA county committees may affect adversely the services which FmHA provides to blacks.

To determine the extent to which black farmers are served by programs which might offset, to some extent, their disadvantageous position in agriculture, beneficiary data, broken down by race, are examined here for the following programs: farm ownership, farm operating, emergency disaster, economic emergency, and soil and water. This comparative analysis does not suggest that specific program participation rates by blacks and whites indicate the presence or absence of racial discrimination in FmHA programs. Numbers alone do not prove discrimination. Moreover, drawing such conclusions would be difficult because of the lack of appropriate and reliable data against which the proportion of blacks and whites being served by FmHA loans could be compared. For example, as explained in chapter 3, by its definition of a farm the U.S. Census of Agriculture excludes a greater proportion of black farmers than whites. Furthermore, there are indications that census enumerators have historically failed to find black farmers at a disproportionately higher rate than white farmers (see app. C).

Detailed records maintained and used at the local level by

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[64] Ibid.

USDA's Agricultural Stabilization and Conservation Service (ASCS) also appear to suggest undercounting by the census. ASCS data indicate that there are 5,165,564 farmers nationwide, more than twice the number counted in the 1978 U.S. Census of Agriculture.[65] ASCS data also indicate a higher proportion of minority farmers than reported by the census. (ASCS minority data are not broken down by specific minority groups.) While the census reported minorities as 3.2 percent of all farm operators in the U.S.,[66] ASCS found minorities made up 5.2 percent of the total.[67] Similarly, for the South, census data reported minorities as 6.0 percent of all farm operators,[68] while ASCS data indicate minorities represent 9.0 percent of the total.[69] Thus, various sources of data provide conflicting estimates of the true number and proportion of black farmers in the total farm population.

Obtaining accurate and relevant data is further complicated when taking into account FmHA's mission to serve farmers with essential needs, who cannot obtain credit elsewhere. There are no available data reflecting how many farmers fall into this needy category altogether or by race. However, due to historical circumstances and current economic conditions, government policies, and institutional practices which have militated against the success of black farm operators, it can be assumed that black farmers are disproportionately in need of FmHA assistance. And because of their low incomes, limited off-farm employment, and small landholdings, it can be assumed that black farmers are disproportionately unable to obtain credit elsewhere. On these bases, then, it would be expected that black farmers should receive a disproportionately large share of FmHA loans. For, if the number and amount of loans to blacks were equal to only their proportion of the farm operator population (2.3 percent), or even the farm resident population (4 percent), it is clear that this level of effort would not be substantial enough to offset the disadvantages FmHA programs are designed to address, much less to halt the rapid decline of black farming.

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[65] Ibid., pp. 37-38.

[66] 1978 Census of Agriculture, pp. 118, 207.

[67] Equal Opportunity Report: USDA Programs -- 1980, pp. 37,38.

[68] 1978 Census of Agriculture, pp. 118, 207.

[69] Equal Opportunity Report: USDA Programs -- 1980, pp. 37. 38.

But, rather than targeting a greater proportion of their services to black farmers, based on their disproportionate need, the Farmers Home Administration has chosen to seek parity in services to blacks and whites, based on data that undercounts the number and proportion of black farmers in the total farm population. In fact, in the last two years FmHA twice has changed the data base it uses to determine the rate at which minorities are receiving loans, and with each consecutive change FmHA has disproportionately narrowed the data base of minority farmers considered eligible for FmHA services. By narrowing the data base, FmHA gives the appearance of serving a greater proportion of black farmers than is truly the case. In 1979, FmHA used U.S. Department of Agriculture, Soil Conservation Service data,[70] and in 1980, it used the census count of farm operators.[71] Now, upon reading a draft of this Commission report, FmHA officials indicate that they intend to change the data base once again, this time to include only those farm operators with annual sales over $2,500, as counted by the Census.[72] FmHA regulations, however, do not limit loans to farmers with sales above $2,500. While this change in the data base has a superficial appeal in focusing on the most viable farms, it represents an unnecessary statistical limitation which adversely affects black farmers. As discussed in Chapter 3 of this report, a disproportionate number of black farm operators have farm sales under $2,500. Furthermore, many additional black rural residents live on farms and are employed in agriculture. With the assistance of FmHA, many of these black rural residents could become self-employed as farm operators. Basically, blacks who are not now successful commercial farmers are not considered potential borrowers in FmHA's statistical analysis. Rather than providing black farmers the means to expand and improve their farming capability, this attitude will only serve to speed their decline.

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70. Equal Opportunity Report: USDA Programs--1979, pp. 88-91. The number of minority farm operators counted by the Soil Conservation Service is more than double the number counted by the Census.

71. Equal Opportunity Report: USDA Programs--1980, pp. 56, 57, 60, 61.

72. Meeting between Farmers Home Administration and Commission staff, Washington, D.C., Jan. 6, 1982.

While FmHA programs, alone, cannot overcome gross economic trends in agriculture, they are intended to support the continued existence of family-sized farming. Since black-operated farms are the most threatened portion of that part of the agricultural sector, for a variety of reasons, assisting them should, logically, assume a high priority in FmHA. Without attempting to establish a single numerical indicator of program participation "parity," the following analysis, therefore, is intended to provide a basis for evaluating the extent of FmHA's efforts to ameliorate the declining position of black farmers.

Black Participation in FmHA Farm Loan Programs

The Farmers Home Administration administers five farm loan programs geared toward meeting the essential needs of farmers who are unable to obtain credit elsewhere: the farm ownership, farm operating, emergency disaster, economic emergency, and soil and water loan programs. Three other FmHA programs are designed particularly to meet the special needs of small farmers: the limited resource loan program, the pilot project for small farm enterprises, and the small farm assistance program. These latter programs have not been authorized separately, but are operated primarily under the provisions of the farm ownership and farm operating loan programs.

In each farm loan program, the proportion of the total number of loans made to blacks declined between 1980 and 1981. Similarly, the proportion of the total dollar amount loaned to blacks fell in each program[73] (see table 4.2). In fiscal year 1981 the Farmers Home Administration obligated almost $7 billion under these farm loan programs. Blacks received 5.1 percent of the total number of FmHA farm loans, but only 2.5 percent of the total dollar amount loaned. The average[74] loan amount for blacks was $18,290, less than one-half the average loan amount of $39,082 for whites.[75]

It was not possible to determine if the decline in loans to blacks in 1981 corresponded with a decline in black loan applications; fiscal year 1981 FmHA loan application data broken down by race and ethnicity were not available as this report was written.[76] It is difficult, in any case, to compare FmHA's application data with actual loan data because the application data include initial loan applications only,[77] while the loan data combine initial and subsequent loans made within the fiscal year.[78] Thus, the rate at which blacks and whites are denied loans cannot be ascertained.

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[73] The "average" loan amounts in this report are calculated as arithmetic means.

[74] Computer data provided by USDA, Farmers Home Administration, Management Information Systems Division, entitled "Distribution of Loans Made by Six Specified Types by Race and Ethnic Group" (Fiscal Year 1981), Report Code 691 (hereafter cited as Report Code 691).

[75] Farmers Home Administration officials pointed out that on a per acre basis (based on the average sizes of black and white-operated commercial farms in the South) the average loan per acre for blacks was greater than that for whites. (Meeting between Farmers Home Administration and Commission staff, Jan. 6, 1982.) However, a "per acre" comparison is not meaningful because small farms, regardless of their size, must have the basic farm buildings and equipment minimally necessary to operate and, often, a greater proportion of land on small farms is developed. Thus, the value of land and buildings operated by blacks, on a per acre basis, is 34 percent greater than that for whites and, therefore, has greater loan leveraging power. (See note 62, Chapter 3 of this report.) Data, broken down by race, regarding the actual assets of FmHA loan borrowers are not available for more meaningful comparisons.

[76] Sinney Turner, staff, Management Information Systems Division, Farmers Home Administration, telephone interview, Nov. 30, 1981.

Application data are also limited in that they may not reflect the true number of potential borrowers. "Pre-application discouragement", which occurs when potential applicants inquiring about loans are discouraged from filing applications, is not revealed in application data. Similarly, potential applicants who are unaware of loan programs, or who are discouraged by their own past experiences or those of others, may not file loan applications.

Keeping in mind these limitations on loan application data, the data still are of interest. For fiscal year 1980, the data showed that 4.5 percent of the initial farm loan applications received by FmHA were from blacks.[79] Generally, the proportion of initial and subsequent loans which were made to blacks was higher than the proportion of farm loan applications filed by blacks. However, despite low black application rates for economic emergency, and soil and water loans (2.4 and 3.7 percent respectively), blacks received these loans at even lower rates (2.0 and 2.9 percent).[80]

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[77] Ibid.

[78] Report Code 691 and Computer data provided by USDA, Farmers Home Administration, Management Information Systems Division, entitled "Racial Program Participation by Fiscal Years" (Fiscal Years 1980 and 1981), Report Code 631 (hereafter cited as Report Code 631).

[79] Manually tabulated data provided by USDA, Farmers Home Administration, Management Information Systems Division, entitled "Applications for Initial Insured and Guaranteed Loans Received by Type of Loan and Race or Ethnic Group During 1980 Fiscal Year Through September 30, 1980" (hereafter cited as FmHA Loan Application Data).

FmHA data are not available regarding the income, assets, and farm size of FmHA farm loan applicants and borrowers, broken down by race and ethnicity. Thus, comparisons cannot be made concerning the number and size of loans awarded to black and white farmers within the same category of income, assets, and farm size.

The decline in FmHA services to black farmers between 1980 and 1981 may reflect either a failure on the part of some States to meet minority targets, or the setting of declining targets for minority services, or both. Examination of State loan and target data for the farm ownership and farm operating loan programs over the past 3 years,[81] for example, reveals FmHA's failure to set and meet meaningful goals in serving blacks. As both a management tool and a civil rights requirement, State FmHA offices are asked to provide the national office with loan targets--projected goals of the number of loans they will make, by program type, broken down by race.[82]

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[80] Ibid., Report Code 631, and Report Code 691.

[81] Report Code 631.

[82] Instructions were included in a memorandum from Gordon Cavenaugh, FmHA Administrator, to FmHA State directors, May 23, 1980. Secretary's memorandum no. 1662, supp. 5, "USDA Policy on Civil Rights" May 18, 1972, initiated program targeting.

Table 4.2

Farm Loans Awarded in Five FmHA Programs by Race of Beneficiaries
(Fiscal Years 1980 and 1981)

	Percentage of total number of loans			Percentage of total dollars loaned		
	Whites	Blacks	Others	White	Blacks	Others
Ownership loans						
1980	92.9	3.1	4.0	95.1	1.7	3.1
1981	94.0	1.9	4.1	95.1	1.3	3.7
Operating loans						
1980	88.2	7.9	3.9	93.0	3.5	3.5
1981	89.8	5.8	4.5	93.5	2.8	3.7
Disaster loans						
1980	89.6	7.6	2.8	94.7	3.3	2.0
1981	92.6	6.0	1.4	95.7	3.0	1.3
Economic emergency loans						
1980	96.3	2.0	1.7	97.1	0.9	2.0
1981	96.6	1.2	2.2	96.4	0.8	2.8
Soil and water loans						
1980	94.5	2.9	2.6	97.1	0.9	2.0
1981	94.7	2.6	3.3	95.8	0.8	3.4

Source: U.S., Department of Agriculture, Farmers Home Administration, Computer Data entitled "Distribution of Loans Made by Six Specified Types by Race and Ethnic Group," Report Code 691 (Fiscal Years 1980 and 1981).

However, these targets frequently are not met.[83] In Florida, for example, under the farm ownership program, FmHA targeted 38 loans for blacks in 1979, but actually made only 7 such loans. Rather than striving to meet the original target, FmHA lowered the 1980 goal to 25 loans; the actual loans made to blacks in 1980 subsequently fell to 3.[84] In 1981 the target was again lowered, this time to 22; the actual number of farm ownership loans made to blacks in 1981 was 4.[85]

Some States stand out in their services to blacks. For example, Louisiana, when ranked against other States, is eighth with the number of black farmers in its population,[86] but first in the number of FmHA farm operating loans to blacks, third in the number of economic emergency loans, third in the number of ownership loans, and first in the number of disaster loans.[87] In contrast, Texas, which is ranked 4th among all States for its black farm operator population,[88] ranks 9th in operating loans, 12th in economic emergency loans, 10th in ownership loans, and 10th in disaster loans to blacks.[89]

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[83] FmHA officials indicate that they intend to combine loans from all the farm programs when evaluating loans against targets. They maintain that this will be fairer to the States. These officials do not believe that it is important to distinguish between the farm programs and presume that loans will be provided to all borrowers under the program offering the best possible terms. (Meeting between Farmers Home Administration and Commission staff, Jan. 6, 1981.) The Commission believes that combining the data will have the effect of camouflaging weak program areas.

[84] Report Code 631 (FY 1980.)

[85] Report Code 631 (FY 1981.)

[86] Louisiana is ranked eighth using data from either the U.S. Census or USDA's Agricultural Stabilization and Conservation Service. 1978 Census of Agriculture, p. 209; Equal Opportunity Report: USDA Programs--1980, p. 37.

All of FmHA's farm loan programs are intended for farmers in need who cannot obtain credit elsewhere.[90] However, some of the farm loan programs are especially intended for minority and low income, small farmers. To ensure that these farmers benefit from FmHA's credit programs, 25 percent of the farm ownership and farm operating loan program funds have been targeted as limited resource loans.[91] These loans are provided under special terms and at reduced interest rates.[92] However, available data indicate that even these loans do not appear to be reaching many black farmers. The majority of blacks receiving farm loans did so at regular interest rates rather than under the special limited resource loan provisions intended for farmers who would have difficulty repaying loans at regular interest rates.[93] Two other programs especially geared towards small

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87. Report Code 691 (FY 1981).

88. 1978 Census of Agriculture, p. 209.

89. Report Code 691 (FY 1981).

90. 7 C.F.R. §§1941.6: 1943.6, .106; 1945.56, 105.

91. Cavanaugh Testimony.

92. Ibid.

93. See section on special programs for small farmers in this chapter.

farmers, the pilot project for small farm enterprises and the small farm assistance program, also have not received the necessary attention and emphasis from FmHA program administrators to make them successful.

As the following program discussions indicate, each of FmHA's farm loan programs is designed to meet the needs of struggling farmers and could contribute significantly to the viability of black agriculture. However, program participation data suggest that the potential these programs have to provide special services to blacks has not been fulfilled.

Farm Ownership Loan Program

Farm ownership loans are for borrowers who cannot obtain credit elsewhere to improve or purchase farms, refinance debts, finance nonfarm enterprises, or make additions to farms.[94] FmHA targeted 25 percent of all farm ownership loan funds for limited resource, low-income farmers in 1980. These farmers were charged interest at a rate of 6 percent, while other borrowers of insured loans[95] paid interest at a rate not more than the cost of money to the government, about 10.5 percent. The interest rate on guaranteed loans[96] was negotiated by the lender and the borrower.[97]

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[94] Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. §§1922, 1923(a) (Supp. III 1979).

[95] Insured loans have the primary characteristics of what most people regard as "direct" loans. They are made directly from the agency to the borrower out of the Agricultural Credit Insurance Fund and the Rural Development Credit Insurance Fund, (revolving funds administered by FmHA). "The fund is supplied with money by private investors who buy government certificates of beneficial ownership. The purchaser's investment is fully insured by the Government against any loss of either principal or interest. FmHA performs all collection and servicing functions in connection with the loans." H.R. Rep. No. 95-986, 95th Cong. 2d Sess. 20, reprinted in [1978] U.S. Code Cong. & Ad. News 1106, 1125.

In FY 1980 blacks received 3.1 percent of all the loans provided under the farm ownership loan program (limited resource and others combined).[98] In FY 1981 the number of black farm ownership loans dropped to only 1.9 percent of the total.[99] The total dollar amount loaned to blacks also fell, from 1.7 to 1.3 percent of the overall dollar amount loaned[100] (see table 4.3).

As noted above, examination of State loan and target data for the farm ownership program reveals FmHA's failure to set meaningful goals in its efforts to serve blacks. For example, in Texas, FmHA targeted 27 loans for blacks in 1979, but actually made only 5 such loans. Rather than striving to meet the original target, FmHA lowered the 1980 goal to eight loans and made nine. (In contrast, the Texas FmHA made 496 loans to whites in 1979 and increased this

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[96] Guaranteed loans are "made by private lenders with FmHA guaranteeing to make up to the lender ninety percent of any loss of principal and interest resulting from failure of the loan[s]." Id.

[97] Cavanaugh testimony, p. 97.

[98] Report Code 691 (FY 1981). Separate limited resource loan data for the farm ownership program were not made available to USCCR staff.

[99] Ibid.

[100] Ibid. These data also reveal that Hispanics outside of Puerto Rico received less than 1 percent of the total amount loaned under the farm ownership program, Asians received three-tenths of 1 percent, and American Indians received seven-tenths of 1 percent.

Table 4.3

Farm Ownership Loans
(FY 1981)

	No.	Percent	Total amount (thous.)	Percent	Average loan
Whites	10,991	94.0	$756,004	95.1	$68,784
Blacks	226	1.9	10,216	1.3	45,204
Others*	476	4.1	29,134	3.7	29,835
TOTAL	11,693	100.0	$795,353	100.1	$68,020

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*Includes Hispanics, Native Americans, and Asians.

Source: U.S., Department of Agriculture, Farmers Home Administration, Computer Data entitled "Distribution of Loans Made by Six Specified Types by Race and Ethnic Group," Report Code 691 (Fiscal Year 1981).

number to 550 in 1980.)[101] In 1981 six farm ownership loans were made to blacks in the State of Texas.[102]

Other States followed this pattern of steadily lowering their goals and accomplishments between 1979 and 1981.[103] North Carolina targeted 65 farm ownership loans for blacks in 1979 and made 47 such loans; in 1980 the target was lowered to 50, and the actual number of loans then declined to 38.[104] The target was lowered again in 1981, to 37, and the number of loans dropped to 33.[105] Between 1980 and 1981, the number of farm ownership loans made to blacks in Mississippi fell from 101 to 30; from 33 to 11 in Tennessee; from 20 to 11 in South Carolina; from 23 to 10 in Virginia; and from 37 to 17 in Alabama.[106]

Data also reveal disparities in the average amounts loaned to blacks and whites. The average farm ownership loan to blacks in 1981 was $45,204 compared to $68,784 for whites.[107] (See table 4.3.) In some States, the disparity between blacks and whites is increasing. For the most dramatic example, in Alabama the average farm ownership loan to blacks fell steadily from $27,811 in 1979, to $21,027 in 1980, to $10,769 in 1981; at the same time, the average farm ownership loan to whites increased from $47,057 in 1979, to $58,420 in 1980, to $64,664 in 1981. Thus, in 1981, the average black farm ownership loan was only one-sixth the amount of the average white farm ownership loan in Alabama.[108]

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[101] Report Code 631 (FY 1980).

[102] Report Code 691 (FY 1981).

[103] The total money obligated for farm ownership loans increased 5 percent between FY 1979 and FY 1980, and declined 14 percent between FY 1980 and FY 1981. Report Code 631 (FY 1980 and FY 1981).

[104] Report Code 631 (FY 1980).

[105] Report Code 631 (FY 1981).

[106] Ibid.

[107] Ibid.

Farm Operating Loan Program

Farm operating loans may be used to purchase farm equipment, livestock supplies, and home needs; to abate pollution; or by rural residents and farmers to operate nonfarm enterprises.[109] Eligibility and interest rates for these loans are the same as for farm ownership loans. However, while farm ownership borrowers have 40 years to repay, farm operating loans must be repaid within 7 years, with a possible rescheduling for up to an additional 7 years.[110]

The farm operating loan program has a higher rate of minority participation than the farm ownership program. However, an examination of loan data over the past decade shows that minority participation, both in terms of number of loans and as a percentage of all loans, is lower now than it was in 1971. At their peak in 1974 minority loans reached 6,824, compared to only 3,024 in

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[108] Report Code 631 (FY 1980 and 1981).

[109] 7 U.S.C. 1942(a)-(c) (1976 and Supp. III 1979).

[110] Id. §316(b)

TABLE 4.4

Farm Operating Loans to Minorities
(Fiscal Years 1971-1981)

	Number of loans	Percent of total
1981	3,024	10.3
1980	3,772	11.7
1979	3,344	9.8
1978	4,154	8.8
1977	4,289	10.8
1976	5,294	12.3
1975	6,490	13.8
1974	6,824	13.3
1973	6,403	12.5
1972	5,347	12.3
1971	5,287	12.5

Source: U.S., Department of Agriculture, Farmers Home Administration, Computer data entitled "Racial Program Participation by Fiscal Years" (Fiscal Years 1980 and 1981), Report Code 631. Graph prepared by USDA, Office of Equal Opportunity entitled "Percent and Number of Operating Loans to Minorities by Fiscal Year" (Fiscal Years 1969-78).

1981[111] (see table 4.4). The percentage of loans to blacks fell from 7.9 percent to 5.8 percent between FY 1980 and FY 1981.[112] (See table 4.2.)

State data reveal that the number of operating loans made to blacks declined steadily between 1979 and 1981 in some States. For example, in Virginia, loans to blacks declined from 187 in 1979, to 117 in 1980, to 51 in 1981; from 74, to 54, to 50 in Texas; from 254 to 240, to 115, in South Carolina; from 495 to 341, to 279 in North Carolina; and from 60 to 55, to 26 in Florida.[113]

Analysis of total and average loan amounts reveals wide disparities when broken down by race. Table 4.5 shows that while blacks received 5.8 percent of all loans, they received only 2.8 percent of the total loan amount (down from 3.5 percent in FY 1980). The average 1981 operating loan for blacks was $13,557, contrasted with $29,053 for whites.[114] State data reveals growing disparities in average loan amounts in some States. In Texas, for example, the average black farm operating loan declined from $19,074 to $16,960 between 1980 and 1981, while the average white loan

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111. Report Code 631 provides data for 1979 through 1981. Graphs prepared by USDA, Office of Equal Opportunity entitled "Percent and Number of Operating Loans to Minorities by Fiscal Year," provide 1969-1978 data.

112. Report Code 631 (FY 1981).

113 Report Code 631 (FY 1980 and FY 1981).

114. FmHA Report Code 691 (FY 1981). The average operating loan for Hispanics was $20,330. Excluding Puerto Rico, Hispanics received 1 percent of all operating loans.

TABLE 4.5

Farm Operating Loans
(FY 1981)

	No.	Percent	Total amount (thous.)	Percent	Average loan
Whites	26,472	89.8	$769,085	93.5	$29,053
Blacks	1,710	5.8	23,183	2.8	13,557
Other*	1,314	4.5	30,346	3.7	23,094
TOTAL	29,496	100.0	$822,614	100.0	$27,889

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*Includes Hispanics, Native Americans, and Asians.

Source: U.S., Department of Agriculture, Farmers Home Administration, Computer Data entitled "Distribution of Loans Made by Six Specified Types by Race and Ethnic Group", Report Code 691 (Fiscal Year 1981).

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increased from $35,250 to $75,277. Thus, the average loan to blacks was less than one-fourth the average loan to whites in FY 1981. Disparities in average loan amounts between blacks and whites also increased in North Carolina, Florida, and Alabama between FY 1980 and 1981.[115]

Emergency Disaster Loan Programs

In Fiscal Year 1981 the emergency disaster loan program provided borrowers with the greatest number of loans and the largest total dollar amount of any of FmHA's farm loan programs.[116] Under this program, loans are made in designated disaster areas (Presidentially-declared or State director authorized), to established farmers, corporations, partnerships, and cooperatives engaged primarily in farming. Applicants need not be family farmers,[117] and the limit on a borrower's principal indebtedness under this program at any one time, as recently established in regulations, is $1.5 million.[118]

Loans may include, but are not limited to, the amount of the actual loss sustained as a result of the disaster.[119] Applicants who are able to obtain credit elsewhere are eligible for loans under $500,000 to cover actual disaster losses.[120] For borrowers unable to obtain credit elsewhere, loans for actual losses from disaster are made at an interest rate not exceeding 8 percent; for additional loan amounts, and for borrowers able to obtain credit elsewhere, interest rates shall not exceed the prevailing market rates.[121] Loans are repayable in 7 to 20 years for operating loans and up to 40 years for farm ownership loans.[122]

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[115] Ibid.

[116] Ibid.

[117] 7 U.S.C. §1961 (Supp. III 1979).

[118] 7 C.F.R. §1945.66(d) (1981). The $1.5 million limit does not apply to borrowers who received emergency disaster loans prior to Dec. 15, 1979.

[119] 7 U.S.C. §1962 (1976).

Over $5 billion in disaster loan money was provided to farmers in FY 1981, but only 3.0 percent was received by blacks. The average loan was $18,198 for black farmers compared to $38,015 for whites[123] (see Table 4.6).

Congressional appropriations hearings in 1980 revealed that in 1979, FmHA made disaster loans to a significant number of multimillion dollar farm establishments. More than 300 borrowers received $1 million or more each. One borrower received more than $10 million.[124] In other words, more than $300 million, 10.5 percent of the total disaster loan money that year, was awarded to

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[120] 7 C.F.R. §1945.56, .63 (d)(1981).

[121] Pub. L. No. 97-35, Sec. 162(a)(1), 95 Stat. 378, reprinted in U.S. Code Cong. & Ad. News 378 (Supp. 7, Sept. 1981).

[122] Id. §§1945.68(b)(1)(i), (b)(2).

[123] Report Code 631 (FY 1981). These data also reveal that Hispanics outside of Puerto Rico received 0.5 percent of the total loan amount under the emergency disaster loan program; American Indians received 0.7 percent; Asians, 0.2 percent.

[124] U.S., Congress, House, Subcommittee of the Committee on Appropriations, Agriculture, Rural Development and Related Agencies Appropriations for 1981, 96th Cong. 2nd Sess. (1980), p. 10-11.

TABLE 4.6

Disaster Emergency Loans
(FY 1981)

	No.	Percent	Total amounts (thous.)	Percent	Average loan
Whites	128,637	92.6	$4,890,079	95.7	$38,015
Blacks	8,379	6.0	152,470	3.0	18,198
Other*	1,974	1.4	69,742	1.3	35,110
TOTAL	138,900	100.0	$5,112,290	100.0	$36,782

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*Includes Hispanics, Native Americans, and Asians.

Source: U.S., Department of Agriculture, Farmers Home Administration, Computer Data entitled "Distribution of Loans Made by Six Specified Types by Race and Ethnic Group," Report Code 691 (Fiscal Year 1981).

millionaires.[125] (The above-mentioned regulations subsequently imposed the $1.5 million limit on loans.) The disaster loan program illustrates, most graphically, a Federal program providing funds to well-established farmers, in some instances, for less than essential purposes, and in some cases, even when credit can be obtained from other sources.

The General Accounting Office reviewed a sample of disaster loans in 1979 and found that many loans were provided to borrowers who could have obtained credit from sources other than FmHA. GAO estimated that 41 percent of the borrowers in Alabama, 29 percent in Texas, 21 percent in Georgia, and 8 percent in Louisiana could have received credit elsewhere.[126] According to the GAO, the FmHA test to determine whether credit is available elsewhere for loan applicants "was widely ignored or received only cursory attention."[127] Furthermore, GAO was not confident that disaster loans were being used for appropriate needs.

> Generally, little or no assurance exists that disaster assistance loans are not used in frivolous ways, particularly by wealthier borrowers. Limiting the disaster assistance loans to borrowers unable to obtain

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[125] Report Code 631 (FY 1980).

[126] U.S., General Accounting Office, Farmers Home Administration and Small Business Administration Natural Disaster Loan Programs: Budget Implications and Beneficiaries (Aug. 6, 1979), p. ii.

[127] Ibid., p. 32. Subsequent regulations have provided for stricter "credit elsewhere" tests, including written declinations of credit by lenders; but for loans of less than $300,000, the requirement for written declinations may be waived by the county supervisor. 7 C.F.R. §1945.56(b)(2)(i)(c)(1981).

credit elsewhere could target the loans to disaster-related needs.[128]

Economic Emergency Loans

The Emergency Agricultural Credit Adjustment Act,[129] enacted in August 1978, established a temporary economic emergency loan program in response to severe difficulties farmers were having in obtaining credit.[130] The continuing tight credit situation prompted Congress to extend and expand the act in March 1980.[131] Though the act expired September 30, 1981, Congress is considering reauthorizing it in the 1982 Farm Bill.[132]

In Fiscal Year 1981, the economic emergency loan program provided the second largest dollar amount of any of FmHA's farm programs -- $1,160,672,000.[133] (The dollar amounts provided in Fiscal Year 1979 and 1980 were considerably larger, about $3 billion[134] and $2 billion respectively)[135]

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[128] Ibid., p. ii.

[129] Emergency Agricultural Credit Adjustment Act of 1978, Pub. L. No. 95-334, tit. II, 92 Stat. 429 (current version at 7 U.S.C.A. prec. §1961 note (Supp. 1980)).

[130] S. Rep. No. 96-591, 96th Cong., 2d Sess. 6, reprinted in [1980] U.S. Code Cong. & Ad. News 217, 222-223 (hereafter cited as S. Rep. No. 96-591).

[131] Ibid.

[132] Ken Auer, staff, Senate Appropriations Subcommittee on Agriculture, telephone interview, Nov. 5, 1981.

[133] Report Code 691 (FY 1981).

[134] 1981 Appropriations Hearings, p. 126.

[135] Report Code 691 (FY 1980).

The act authorizes a program of insured[136] or guaranteed loans[137] to farmers, ranchers, farm cooperatives, corporations, and partnerships primarily engaged in agriculture who are unable to obtain credit from normal borrowing sources due to national or area-wide economic stresses.[138] These loans may not be used to purchase or lease additional land, but may be used to refinance outstanding indebtedness (except for a farm or real estate purchased within the year).[139]

The interest rate for insured loans under this program is based on the cost of money to the Government; the rate for guaranteed loans is agreed on by the borrower and the lender.[140] The ceiling on economic emergency loans is $400,000,[141] repayable in 7 to 20 years at the discretion of the Secretary of USDA.[142]

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136. About 96 percent of all economic emergency loans were insured. Testimony of Henry Eschwege, Director, Community and Economic Development Division, U.S. General Accounting Office, before the Subcommittee on Conservation and Credit of the House Committee on Agriculture, Jan. 31, 1980 (hereafter cited as Eschwege Testimony).

137. Four percent of all economic emergency loans were guaranteed. Eschwege Testimony.

138. 7 U.S.C.A. prec. §1961 note, sec. 202 (Supp. 1980).

139. *Id.* Sec. 203(a).

140. *Id.* Sec. 204(b).

141. *Id.* Sec. 207(b).

142. *Id.* Sec. 204(c).

In 1981 black farmers received only 1.2 percent of the total number of economic emergency loans (down from 2.0 percent in 1980) and only 0.8 percent of the total dollar amount loaned under this program. The average loan amount for a black recipient was $27,997, one-third less than the average loan amount of $43,472 for white farmers[143] (see table 4.7).

A GAO study conducted in 1979 found that the average borrower of an economic emergency loan had a net worth of $202,000 and a farm of about 570 acres. The average loan was $137,000. Only in isolated cases were tests made by FmHA to determine whether credit was available to borrowers elsewhere.[144]

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[143] Report Code 691. These data also show that Hispanics outside of Puerto Rico received 0.7 percent of the total economic emergency loan amount; American Indians, 0.8 percent; and Asians, 0.5 percent.

[144] Eschwege Testimony.

TABLE 4.7

Economic Emergency Loans
(FY 1981)

	No.	Percent	Total amounts (thous.)	Percent	Average loan
Whites	25,733	96.6	$1,118,664	96.4	$43,472
Blacks	330	1.2	19,239	0.8	27,997
Other*	573	2.2	32,769	2.8	57,236
TOTAL	43,696	100.0	$1,160,672	100.0	$43,575

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*Includes Hispanics, Native Americans, and Asians.

Source: U.S., Department of Agriculture, Farmers Home Administration, Computer Data entitled "Distribution of Loans Made by Six Specified Types by Race and Ethnic Group," Report Code 691 (Fiscal Year 1981).

Soil and Water Loan Program

Soil and water loans are provided to farmers, ranchers, associations, and nonoperator owners for land and water development use and conservation. These loans are repayable within 40 years. Interest rates on insured loans were 10.0 percent in 1980, while guaranteed loan rates are negotiated between the lender and borrower.[145]

Although the soil and water loan program is relatively small in comparison to FmHA's other farm loan programs, it is relevant to black farmers who, as discussed in chapter 3, have greater than average conservation and development needs.[146] However, blacks received only 2.6 percent of the loans under this program, and only 0.8 percent of the total amount loaned. The average loan for blacks was $9,136, less than one-half the average loan amount of $21,922 for whites[147] (see table 4.8).

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[145] 1981 Appropriations Hearings, p. 158.

[146] U.S., Department of Commerce, Land and Minority Enterprise: The Crisis and The Opportunity, prepared by Dr. Lester M. Salamon for the Office of Minority Business Enterprise (1976), p. 23.

[147] Report Code 691 (FY 1981).

TABLE 4.8

Soil and Water Loans
(FY 1981)

	No.	Percent	Total amount (Thous.)	Percent	Average loan
Whites	2,129	94.7	$46,673	95.8	$21,922
Blacks	44	2.0	402	0.8	9,136
Other*	75	3.3	1,666	3.4	22,333
TOTAL	2,248	100.0	$48,741	100.0	$21,682

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*Includes Hispanics, Native Americans, and Asians.

Source: U.S., Department of Agriculture, Farmers Home Administration, Computer Data entitled "Distribution of Loans Made by Six Specified Types by Race and Ethnic Group," Report Code 691 (Fiscal Year 1981).

Special Programs for Small Farmers

Limited Resource Loans

Twenty-five percent of all farm ownership and farm operating loans are targeted by FmHA as limited resource loans to be provided to low-income farmers under special terms and at reduced interest rates.[148] Congress specifically identified minority farmers as among those who need special assistance and as intended beneficiaries of this program.[149] However, FmHA data concerning the racial and ethnic characteristics of limited resource borrowers are currently available[150] only for Fiscal Year 1980 of the farm operating loan program and are limited to initial loans.[151] For purposes of analysis the total number of limited resource loans (initial and subsequent loans in the same year) made to black borrowers must be estimated based on an assumption that those black and white applicants who received initial loans will receive subsequent loans at an equal rate.[152]

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[148] Cavanaugh testimony.

[149] H.R. Rep. No. 95-986, 95th Cong., 2d Sess. 11, reprinted in [1978] U.S. Code Cong. & Ad. News 1106, 1116.

[150] The Commission staff requested from FmHA initial and subsequent loan data, broken down by race and ethnicity, for limited resource loan borrowers under FmHA's farm ownership and farm operating loan programs. (Louis Nunez, Staff Director, letter to Paul Holm, Director, Management Information Systems Division, June 8, 1981.) FmHA responded that "...the Report Code to which you referred in your letter, does not contain race and ethnicity data on limited resource farm ownership loan borrowers. This appears to have been an oversight on the part of the computer programmer this past year. We expect that this will be corrected for Fiscal Year 1981 data." Paul Holm, letter to Louis Nunez, July 15, 1981. As this report goes to publication, data for fiscal year 1981 still have not been made available.

FmHA defines a limited resource farmer as one who operates a "small or family farm (a small farm is a marginal family farm)", with low income, and possibly "underdeveloped managerial ability, limited education, [and a] low producing farm...."[153] Due to the

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151. Data provided by the Management Information Systems Division, FmHA entitled "Initial Insured Farm Operating Limited Resource Loans" (FY 1980), Form FmHA 389-456B, Report Code 548 (hereafter cited as Report Code 548). These data do not include subsequent loan data which was requested by Commission staff. According to FmHA, "since this report [which includes limited resource loan data] is based upon borrower Fund Analysis and Characteristics input forms, it will not include subsequent borrowers because we do not collect this data due to duplication with the initial loan." Paul Holm, letter to Louis Nunez, July 15, 1981.

152. The number of initial and subsequent farm operating loans made in each State (not broken down by race or ethnicity) in FY 1980 is provided in FmHA data entitled "Farm Operating Limited Resource Loans Obligated, Fiscal Year 1980 Through September 30," Table 4, (hereafter cited as "Farm Operating Limited Resource Loans"--Table 4). From these data, one can determine the ratio of initial loans to subsequent loans for each State. These ratios can then be applied to the number of initial loans made to blacks (Report Code 548) to provide an estimate of the total number of limited resource loans made to blacks under the farm operating loan program. This may be an overestimation of black participation; if there is discrimination against blacks, they may receive followup loans at a lower rate than whites. However, there are no data available to make this determination. Using only actual initial loan data reduces the rates of limited resource loans for both blacks and whites, but the ratios between the black and white actual loan rates remain the same as the ratios for estimated loans.

153. 7 C.F.R. §1941.4(g) (1980).

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relatively small size of their farms, their low incomes, and limited education,[154] it would be expected that most black borrowers would qualify for limited resource loans and that black borrowers would receive limited resource loans at a disproportionately higher rate than white borrowers. However, the 1980 data on initial loans indicate, and the projection of subsequent loans suggests, otherwise.

The majority of blacks receiving farm operating loans did so at regular interest rates rather than under the special limited resource loan provisions intended for farmers who would have difficulty repaying loans at regular interest rates. For example, in Georgia, out of the 91 farm operating loans received by blacks, only an estimated 16 loans (17.6 percent) were limited resource, low-interest loans. In Virginia, an estimated 21 out of the 117 loans to blacks (17.9 percent) were low interest loans; in Alabama, an estimated 51 out of the 166 loans (30.4 percent) and in North Carolina, an estimated 85 out of the 341 loans to blacks (24.9 percent) were limited resource, low-interest loans.[155]

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[154] See chaps. 2 and 3.

[155] Report Code 548 provided initial limited resource loan data; projected subsequent loans were derived from "Farm Operating Limited Resource Loans"--Table 4. Data on the number of total operating loans received by blacks are found in FmHA Report Code 631. In Georgia, blacks received 9 initial and 7 projected subsequent limited resource loans; in Virginia, 8 initial and 13 projected subsequent limited resource loans; in Alabama, 25 initial and 26 projected subsequent limited resource loans; and in North Carolina, 44 initial and 41 projected subsequent limited resource loans.

Furthermore, by these estimates, black borrowers received limited resource loans at a disproportionately lower rate than white borrowers in six States. In Georgia, 27.8 percent of the farm operating loans received by whites were limited resource loans, compared to only 17.6 percent of the loans to black borrowers; in Florida, 27.7 percent of the loans to white borrowers, compared to 20.0 percent of the loans to blacks; in Arkansas, 32.0 percent of the loans to whites, compared to 25.9 percent of the loans to blacks; in Kansas, a rate of 22.3 percent for whites, none for blacks; Kentucky -- 23.5 percent for whites, 13.6 percent for blacks; West Virginia -- 22.4 percent for whites, none for blacks.[156]

These limited resource loan data indicate that even in the farm loan program created by Congress to address most specifically the needs of small and minority farmers, black farmers have not benefited significantly.

Pilot Project for Small Farm Enterprises

In June 1980 FmHA initiated a project specially geared to reach small farm enterprises with gross annual incomes as low as $3,000. This pilot project was implemented in seven States: Alabama, Florida, Georgia, Louisiana, Mississippi, Missouri, and South Carolina. Farmers lacking the income, training, or experience otherwise necessary to obtain FmHA loans were eligible for very small farm enterprise loans under this project.[157] The location of this project in Southern States with significant black farm populations (see appendix E) and the special eligibility criteria for this project made it especially suited to the needs of black small farmers.

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[156] Ibid. The total number of operating loans to whites is also found in FmHA Report Code 631. These percentages are based on intial loan data and subsequent loan projections.

However, no loans were made under this special project, and FmHA discontinued it December 31, 1981.[158] Nonutilization of the project may have been due to a lack of FmHA program administration emphasis (from the top on down) rather than a lack of need. An exhibit attached to the back of the FmHA operating loan instructions was the only information and instruction provided to FmHA staff regarding this project.[159] Thus, it is not clear whether even FmHA staff generally knew about the program and recognized its importance, much less whether potential borrowers knew about it. No targets were set and there was no apparent outreach effort to inform farmers of the program.[160] FmHA has never conducted an evaluation of the project.[161]

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[157] FmHA Instruction 1941-A, exhibit B.

[158] Lynn Pickinpaugh, Acting Director, Farm Real Estate and Production Loan Division, Farmers Home Administration, USDA, telephone interview, May 8, 1981; meeting between Farmers Home Administration and Commission staff, Jan. 6, 1982.

[159] Ibid.

[160] Ibid.

[161] Meeting between Farmers Home Administration and Commission staff, Jan. 6, 1982.

FmHA's traditional view of farming may have also contributed to this program's failure. Eligibility for the program, as is the case in other FmHA farm programs, was restricted to "bona fide" family farmers, defined as those producing "agricultural commodities for sale in sufficient quantities so that [they are] recognized in the community as farms rather than a rural residence(s)."[162] Subjective interpretation of this requirement results in the exclusion of certain types of nontraditional agricultural production, such as rabbits, that may be beneficial to small farmers.[163] FmHA officials also indicate that it is common practice to deny loans for agricultural activities which are not typical in a particular region of the country.[164] Subjective interpretation may also adversely affect marginal black farmers who may not receive recognition as farmers by FmHA personnel.

This project had significant potential to assist black farmers, but, required creativity and effort in program planning and administration. Unfortunately, it received no more than a token effort on the part of FmHA program administrators and personnel.

Small Farm Assistance Program

In January 1979 the Secretary of Agriculture announced the Department's policy to "encourage, preserve and strengthen the small

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162. FmHA Instruction 1941-A, §1941.4(d), p. 2.

163. Pickenpaugh Interview.

164. Meeting between Farmers Home Administration and Commission staff, Jan. 6, 1982.

farm as a continuing component of American agriculture."[165] Secretary's Memorandum No. 1969 established a policy committee on small farm assistance which included USDA's Assistant Secretaries and the Director of Economics, Policy Analysis and Budget. The committee established the following goals for the Department:

1. Improve small farm family income levels, and increase family skills for both farm and non-farm employment;
2. Improve the access of small farm families to adequate housing and essential community facilities and services;
3. Provide more equitable access to USDA program opportunities by targeting efforts on small farm families;
4. Create and implement a process for involving the private sector and local, state, and federal agencies in establishing program priorities to benefit small farm families; and
5. Update and improve the technical expertise and sensitivity of USDA agency personnel to make them more responsive to the needs of small farm families.[166]

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[165] USDA, Secretary's Memorandum No. 1969, "Assistance to Small Farm Operators," Jan. 3, 1979 (hereafter cited as Secretary's Memorandum No. 1969).

[166] USDA, Memorandum from the Assistant Secretaries to agency administrators, Feb. 26, 1979.

In light of the historical discrimination and the accumulated disadvantages facing black farmers (as discussed in chapters 2 and 3), the goals of this program have particular relevance for them.

A small farm working group comprised of staff representatives from various agencies within USDA is responsible for coordinating small farm activities under the supervision of the policy committee.[167] Consistent with the Department's basic organization, the small farm effort is highly decentralized. State rural development committees appointed State small farm committees consisting of staff from the FmHA, Soil Conservation Service, Extension Service, Forest Service, and the Agricultural Stabilization and Conservation Service. The State small farm committees were asked to submit proposals for small farm assistance projects to the national small farm working group. Of those submitted, 17 projects were selected.[168]

The small farm assistance projects relied on Community Services Administration (CSA) funds and ACTION volunteers. No new USDA funds or activities were directed to the projects. "The intention of these projects was to test a variety of ways in which the resources of USDA, CSA, and ACTION could result in the improved ability of small farms to become economically more viable."[169]

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[167] Secretary's Memorandum No. 1969.

[168] USDA Evaluation Committee, "Evaluation of the Small Farm Assistance Projects" (undated) (hereafter cited as "Evaluation of the Small Farm Assistance Projects).

[169] Ibid.

No data have been gathered on minority participation in the Small Farm Assistance Projects. From a review of the project descriptions, it appears that at least two projects in the Southeast involve black farmers and two in the West involve American Indians.[170] The review of the project files also revealed that many of the projects have had difficulty getting started, some are losing momentum, and others appear to have failed. After 1 year of the program, a USDA evaluation of six projects was conducted; its findings are summarized here:

-- Because there was no new authority or funding for Small Farm Projects, existing programs and funds had to be used to accomplish project objectives. But rules and regulations for existing programs were sometimes not flexible enough to accomodate the special needs of individual small farm projects. Projects need either new monies or exemptions from existing rules and regulations.

-- There was a lack of coordination and communication among the agencies. There seemed to be no clearly defined management structure in some of the projects, and there was generally a lack of firm agency commitments of funds and/or personnel.

-- There was a lack of small farmer participation in the development of the projects.

-- Some projects were not geared to small farmers, i.e., they required large capital investments.

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170. Commission staff review of the small farm assistance project files, Washington, D.C., May 11, 1981.

-- There is no systematic way in which the Department can determine if USDA programs are in fact being directed to any one target group. No organized information system is operating to feed back data to reevaluate goals and make new recommendations.

-- More emphasis needs to be placed on "identifying and reaching more of the 1.2 million limited resource small farmers."[171]

Although this program, with strengthened organization and funding, has the potential to target more coordinated support to black farmers, its continued existence is not clear. FmHA has already ceased to participate in some of the working groups which support these small farm projects.[172]

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[171] "Evaluation of the Small Farm Assistance Projects."

[172] Meeting between Farmers Home Administration and Commission staff, Jan. 6, 1982.

Summary

The Farmers Home Administration is in a unique position to assist black farmers. Historically, Congress has mandated FmHA to provide financial support and supervision to those farmers who are unable to obtain credit elsewhere. Congress further reinforced its intent to reach those in greatest need when, in 1978, it authorized FmHA to make "limited resource loans" with special terms and conditions to low income farmers, minorities, and women who have had great difficulty obtaining credit in the past.

Despite its tradition as a lender of last resort, however, FmHA has become increasingly a lender for farmers with large assets, who rely heavily on debt financing to expand their agricultural operations, while taking advantage of inflation, technology, and tax benefits. Thus, despite their disproportionate need, black farmers received only a very small proportion, 2.5 percent, of the total dollar amount loaned through FmHA's farm credit programs in 1981. Furthermore, while the limited resource loan program was specifically intended to enhance the ability of minorities to qualify for and repay FmHA loans, most black FmHA borrowers did not benefit even from these loans. In fact, in six States white borrowers were more likely than blacks to have received these low interest, limited resource loans.

Complaints filed by Southern black farmers assert that FmHA denies them equal credit opportunities by failing to provide them with applications and information regarding relevant loan programs;

awarding blacks smaller loans under less hospitable conditions than whites; and taking inordinate time to process loans for blacks. FmHA data reveal that targets and actual loans to minorities have been declining in many States. USDA's onsite reviews of FmHA offices reveal that targets have not been set or aspired to at the county level where loans are made, nor has adequate outreach been conducted to ensure that minority farmers are aware of FmHA loan programs, particularly limited resource loans.

Hence, it appears that, far from accomplishing its original purpose, FmHA has failed to advance, and in come cases may have hindered the efforts of black small farm operators to remain a viable force in agriculture. In light of these problems, civil rights enforcement is particularly important to ensure that FmHA provides equal opportunities for minority farmers.

Chapter 5

Civil Rights Enforcement

Various pieces of civil rights legislation have been enacted to protect individuals from discrimination. Some of these laws, such as Title VI of the Civil Rights Act of 1964,[1] pertain to "indirect" Federal assistance and prohibit discrimination in services provided by organizations or entities receiving Federal funds and/or assistance. For example, the Farmers Home Administration administers approximately 21 programs which provide loans or grants to public and private entities for such things as community facilities, rural rental housing, farm labor housing, recreation and pollution abatement.[2] Recipients of these program funds, because they are covered by Title VI, are prohibited from discriminating on the basis of race, color, or national origin in their federally assisted programs and activities. Any Federal agency providing program funding is responsible for ensuring civil rights compliance on the part of its program recipients by implementing an enforcement program.[3]

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[1] 42 U.S.C. §§2000d to 2000d-4(1976).

[2] 7 C.F.R. Part 15, Subpart A, Appendix (1980).

Other Federal programs provide direct, rather than indirect, assistance. For example, social security retirement programs, or in the case of USDA, the Agricultural Stabilization and Conservation Service support programs and the Farmers Home Administration farm loan programs provide assistance to individuals directly rather than through public or private entities. Direct assistance programs are not covered by Title VI,[4] but are usually covered by clauses within their authorizing legislation which prohibit discrimination, or by other legislation prohibiting discrimination. At the very least, the fifth amendment to the Constitution prohibits the Federal government from spending its funds in a discriminatory manner.[5]

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[3] Executive Order 11764, issued in 1974, authorized the Attorney General to coordinate Federal enforcement of Title VI. 3 C.F.R. 849 (1971-1975 COMP.). Pursuant to this authority, the Department of Justice issued regulations setting forth standards and procedures to be followed by Federal agencies in enforcing Title VI requirements. "Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs," 28 C.F.R §§42.401- .415(1980). Pursuant to its authority, the Department of Justice also conducts reviews of the Title VI enforcement programs of Federal agencies. More recently, the authority of the Attorney General in this area was expanded to include leadership and coordination in the implementation of all civil rights laws (including Title VI) prohibiting discrimination in programs receiving Federal financial assistance. Exec. Order No. 12250, 3 C.F.R. 298 (1981).

[4] U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. VI (1975), p. 9.

[5] Bolling v. Sharpe, 347 U.S. 497 (1954).

In the case of the Farmers Home Administration, recipients of direct assistance provided by farm loan programs are protected under the Equal Credit Opportunity Act of 1974 as amended[6] (ECOA) which covers all lenders, including the Federal Government. Civil Rights compliance and enforcement requirements under ECOA are distinct from Title VI requirements. While the scope of protection under ECOA is broader than Title VI (ECOA prohibits discrimination on the basis also of religion, sex, and age, while Title VI does not), ECOA regulations do not require continuous agency monitoring of civil rights compliance.

This chapter describes the various regulations promulgated by the Federal Reserve Board, USDA, and FmHA to implement ECOA's civil rights protections. These requirements are widely dispersed. Following the description of the legal authority for enforcement, this chapter will review the enforcement activities of the various civil rights units within USDA and FmHA, which also are widely dispersed.

Equal Credit Opportunity Act

The Equal Credit Opportunity Act bars credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance benefits, and good faith exercise of rights under the Consumer Credit Protection Act.[7] ECOA provides for civil liability for actual and punitive damages in individual or class actions, except in the case of government entities (such as the Farmers Home Administration), which are exempt from punitive damages.[8]

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[6] Pub. L. No. 93-495, Oct. 28, 1974, 15 U.S.C. §§1691-1691f(1976).

Regulations implementing ECOA were promulgated in 1977 by the Federal Reserve Board.[9] These regulations (known as Regulation B) provide a general interpretation of prohibited practices, including information that a creditor may or may not request from a loan applicant, with particular detail regarding sex and marital status discrimination. The regulations also require that a creditor notify an applicant, within specific time frames, of 1) any adverse action taken, 2) a statement of specific reasons for the action or a disclosure of the applicant's right to request such a statement, 3) a notice of ECOA's prohibition against discrimination, and 4) the name and address of the appropriate agency responsible for ECOA enforcement.[10]

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[7] Id. §1691(a). Regulations published pursuant to ECOA by the Federal Reserve Board do allow creditors to provide "special purpose credit programs" designed to benefit a particular "economically disadvantaged class of persons." Applicants may be refused credit if they do not qualify for eligibility under these special programs "so long as the program was not established and is not administered with the purpose of evading the requirements of the Act." 12 C.F.R. §202.8(b)(2) (1981).

[8] 15 U.S.C. §1691e(a),(b)(1976).

[9] 12 C.F.R. Part 202 (1981). The Federal Reserve Board is authorized to promulgate implementing regulations under §703 of the Equal Credit Opportunity Act 15 U.S.C. §1691(b)(1976).

For monitoring purposes, Regulation B requires creditors to request information regarding race, sex, national origin, marital status, and age from applicants for "consumer credit relating to the purchase of residential real property, where the extension of credit is to be secured by a lien on such property."[11] However, Regulation B does not require that this information be collected for statistical purposes or that it be reviewed and analyzed to determine potentially discriminatory patterns in lending practices.

Enforcement responsibility for ECOA is assigned to various government entities;[12] the Federal Trade Commission (FTC) is authorized to enforce compliance with ECOA in direct loan programs administered by the Farmers Home Administration.[13] However, Regulation B does not provide enforcement agencies such as FTC with specific guidelines for ECOA enforcement -- that is, how, when, or where compliance with the act should be monitored. FTC does have authority to issue regulations "respecting its own procedures in enforcing compliance" of the act,[14] but it has not done so.[15] And, while FTC has investigatory powers, it does not have staff to monitor compliance through an ongoing review process; nor does it have the resources to investigate every complaint.[16] While FTC has the authority to sue the Farmers Home Administration or to refer ECOA violations to the Attorney General,[17] it never has used these powers.[18] Thus, for practical purposes, responsibility for ECOA compliance in FmHA programs, rests essentially with the U.S. Department of Agriculture and FmHA.[19]

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[10] 12 C.F.R. §202.9(a)(1981).

[11] Id. §202.13(a).

[12] For example, the Comptroller of Currency is responsible for enforcing ECOA with respect to national banks; the Federal Reserve Board is responsible for member banks of the Federal Reserve Board System other than national banks. 15 U.S.C. 1691c(a)(1976).

[13] Id. §1691c.

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[14] Id. §1691c(d).

[15] John Jerison, staff attorney, Credit Practices, Federal Trade Commission, telephone interview, Aug. 3, 1981.

[16] Ibid.

[17] "All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance" under ECOA. 15 U.S.C. §1691c(c)(1976). If unable to obtain compliance, agencies with administrative enforcement responsibility "are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted." Id. §1691e(g).

[18] Though legally permissible, certain practical problems are raised if one Federal agency sues another. Jerison, telephone interview, Nov. 2, 1981.

[19] While an individual has a private right of action under ECOA, he or she cannot collect punitive money damages from the Federal Government under ECOA. 15 U.S.C. §1691e(a)-(b)(1976).

Neither USDA nor FmHA has published regulations pertaining exclusively to ECOA enforcement. Rather, their civil rights compliance and enforcement requirements are found in various regulations, administrative rules, and enforcement plans,[20] combining responsibilities authorized by a series of civil rights legislation including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968,[21] Executive Order 11246,[22] and ECOA. But for the most part these regulations and guidelines focus on Title VI enforcement of nondiscrimination in services provided by intermediate organizations or entities receiving

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[20] USDA's "nondiscrimination" regulations (which cover Title VI and direct assistance programs) are found at 7 C.F.R. Part 15 (1980); Delegation of authority to the Director of the Office of Equal Opportunity at Id. §2.80; Department of Agri. Admin. Reg. tit. 9 (1976) (hereafter cited as 9 AR) (printed as appendix 1.4 to U.S. Department of Agriculture, Office of Equal Opportunity, Title VI Enforcement Plan for the Department of Agriculture, (undated), p. 71 (hereafter cited as Title VI Enforcement Plan). FmHA's "Civil rights Compliance Requirements" are found at 7 C.F.R. §§1901.201-.205(1981); FmHA's "Receiving and Processing Applications" regulations at Id. §§1910.1-.11.

[21] 42 U.S.C. §§3601-19(1976 and Supp. III 1979) prohibits discrimination in rental or sales of residential property.

[22] 3 C.F.R. 339 (1964-65 Comp.), reprinted in 42 U.S.C. §2000e at 1232 (1976), requires nondiscrimination in any employment decisions made by Federal government contractors and subcontractors.

USDA funds and/or assistance.[23] Scarcely is there any mention of ECOA or its requirements, which pertain to loans made to individuals directly rather than through public and private entities covered by Title VI.

For example, USDA's "Nondiscrimination Regulations," the Department's major civil rights provisions, contain 26 pages of requirements, of which only 1 page pertains to direct assistance programs; the remainder apply to Title VI programs only. Those regulations pertaining to direct assistance programs prohibit discrimination on the basis of race, color, religion, sex, age, or national origin.[24] However, other than the filing of complaints,[25] the regulations do not provide for any mechanism (such as compliance reviews) by which these prohibitions are to be enforced in direct assistance programs.

FmHA's "Civil Rights Compliance Requirement"[26] is issued pursuant to various identified civil rights laws, including ECOA, but, in the 10 pages of regulations only prefatory mention is made of ECOA.[27] The only sections of the regulations which pertain to ECOA are 1) FmHA's requirement to post "Justice for All" posters in each FmHA office,[28] 2) an applicant's right to file a discrimination complaint,[29] and 3) the FmHA employee prohibition against discriminating on the basis of race, color, religion, sex, national origin, or marital status.[30] Age discrimination, prohibited under ECOA, is unaccountably omitted from these FmHA regulations. Requirements for compliance reviews[31] and collection of racial and ethnic data[32] apply to Title VI programs only.

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[23] USDA administers some 76 Title VI covered programs. 7 C.F.R. Part 15, subpart A, Appendix (1980).

[24] 7 C.F.R. §15.51(1980).

[25] Id. §§15.52(a) and (b). According to these regulations, complaints are to be "handled in accordance with the procedures established by law or regulation of the Department or any of its agencies for the handling of complaints or appeals under such program or activity which are not based on grounds of discrimination...." Id. §15.52 (1980). However, in practice, these complaints are handled differently. See section on Complaints and Appeals Division in this chapter.

[26] 7 C.F.R. Part 1901, Subpart E (1981).

Other FmHA regulations, governing the loan application process, prohibit discrimination based on all of the "ECOA prohibited bases" -- race, sex, national origin, color, religion, marital status, age, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.[33] Additional ECOA related requirements in these regulations include:

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27. Id. §1901.201(1981).

28. Id. §1901.202(f).

29. Id. §1901.202(h).

30. Id. §1901.202(b).

31. Id. §1901.204.

32. Id. §1901.202(g).

33. 7 C.F.R. §1910.2 (1981).

-- No oral or written statement may be made to applicants or prospective applicants that would discourage them from applying for assistance, based on any ECOA 'prohibited basis.'[34]

-- An explanation of the types of assistance available should be given whenever it is not clear what type of loan or grant will meet the applicant's needs.[35]

-- Written notice of eligibility or rejection will be sent to all applicants within 30 days after receipt of the completed application....If determination of eligibility cannot be made within 30 days from the date of receipt of the completed application, the applicant will be notified in writing of the circumstances causing the delay, and the approximate time needed to make a decision. The letter will contain the ECOA paragraph set forth....[36] [ECOA prohibited bases and notification that the Federal Trade Commission is responsible for enforcing FmHA compliance with ECOA].[37]

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34. Id. §1910.3(a).

35. Id. §1910.3(c).

36. Id. §1910.4(d).

37. Id. §1910.6(b)(1).

None of the above mentioned regulations issued by USDA and FmHA provides for ECOA enforcement. They contain prohibitions against discrimination in direct assistance programs but they do not establish mechanisms to ensure compliance. Instead, general authority for USDA and FmHA enforcement of civil rights compliance, including ECOA, is found in USDA's Administrative Regulations.[38] The Director of USDA's Office of Equal Opportunity (OEO) is authorized "to develop and administer...a comprehensive program to assure equal opportunity for all persons in all aspects of USDA programs without regard to race, color, national origin, sex or religion...."[39] As part of this responsibility, OEO "set(s) standards for agency compliance review procedures, including approval of proposed procedures and review guidelines."[40] In addition to OEO's Department-wide responsibility, each agency within the Department is responsible for "the development and implementation of a comprehensive civil rights compliance program within the agency."[41]

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[38] 9 AR §§2,3(P), (R)(1976).

[39] Id. §2. The regulations do not include age as a basis of discrimination prohibited under both ECOA and the Age Discrimination Act of 1975. (The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.) 42 U.S.C. §§6101-07 (1976 and Supp. III 1979).

[40] 9 AR §3(p).

[41] Id. §22(A)(4).

programs, USDA enforcement of statutory and regulatory provisions intended to ensure equal opportunity in FmHA farm loan programs is diffuse. Responsibility for enforcement is found at three levels of administration: 1) the field FmHA offices, including State, district and county FmHA offices, 2) the equal opportunity staff (EOS), a unit placed within the national office of FmHA, responsible to the FmHA Administrator, and 3) the Office of Equal Opportunity with overarching, Department-wide jurisdiction, reporting to USDA's Assistant Secretary of Administration (see figure 5.1). The compliance responsibilities of these units overlap, as discussed below, resulting in uncertain accountability at best, and at worst, failure of USDA to protect the rights of its intended program beneficiaries.

FmHA Field Program Reviews

At the local level, ensuring that FmHA services and loans are provided in a nondiscriminatory manner is basically the responsibility of FmHA loan specialists, county supervisors, and district directors. Since there are no full-time equal opportunity personnel employed at the State, district, or county levels, civil rights compliance reviews of county FmHA offices are conducted periodically by district directors, county supervisors, or designated staff.[42] Thus, officials who administer loan programs are themselves responsible for certifying their own compliance with civil rights requirements.

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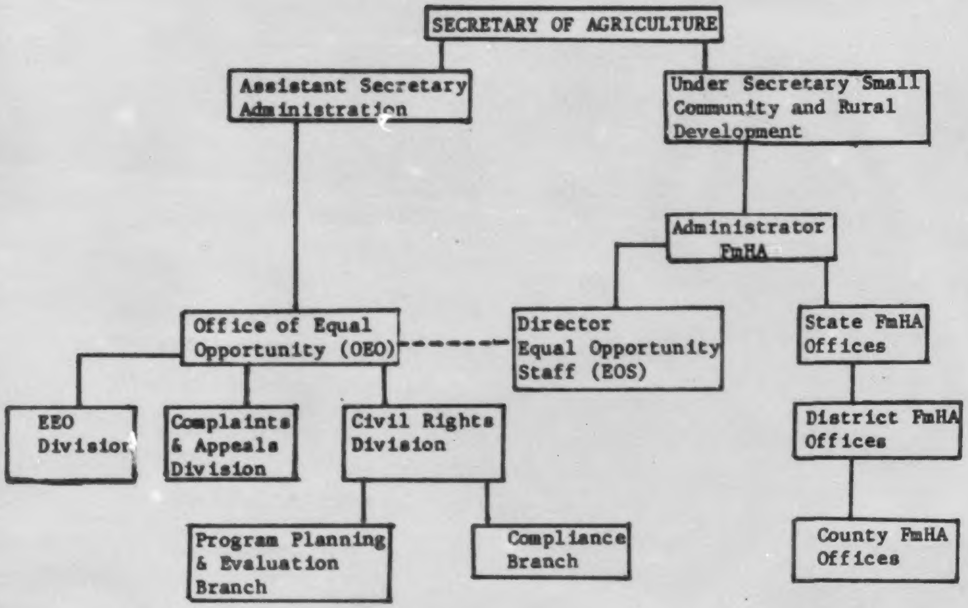
[42] Ras Smith, equal opportunity specialist, equal opportunity staff, Farmers Home Administration, USDA, interview in Washington, D.C., Mar. 18, 1981 (hereafter cited as Smith Interview).

Figure 5.1. ORGANIZATIONAL CHART

U.S. Department of Agriculture and Farmers Home Administration Civil Rights Enforcement Staff


SECRETARY OF AGRICULTURE
Assistant Secretary Administration
Under Secretary Small Community and Rural Development
Administrator FmHA
Office of Equal Opportunity (OEO)
Director Equal Opportunity Staff (EOS)
State FmHA Offices
EEO Division
Complaints & Appeals Division
Civil Rights Division
District FmHA Offices
Program Planning & Evaluation Branch
Compliance Branch
County FmHA Offices

Source: U.S., Department of Agriculture, Organizational Chart (undated); Farmers Home Administration, Organizational Chart (November 21, 1978); Office of Equal Opportunity, Equal Opportunity Report: USDA Programs 1980, p. 1; U.S, Office of the Federal Register, U.S. Government Manual 1981/82 (May, 1981), app. C, p. 822.

This compliance review process appears to be inadequate. The Department of Justice, in an interagency survey report reviewing FmHA's Title VI enforcement, found that "there are few if any standards regarding civil rights procedures"[43] for compliance reviews, and there are "no procedures to assure that reviews are done correctly or to monitor reviews other than when a finding of non-compliance is made."[44] According to this report, compliance reviews are a low priority in terms of reviewers' overall responsibilities, are subject to a potential conflict of interest, and demonstrate a lack of adequate training on the part of reviewers.[45]

While FmHA's civil rights guidelines governing compliance reviews are woefully inadequate for enforcement of Title VI, they are simply nonexistent for enforcement of ECOA. There are no regulations or compliance manuals that instruct reviewers to conduct reviews, or how to make a determination of compliance, under ECOA. A report prepared by USDA's Office of Equal Opportunity in 1976[46]

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43. U.S., Department of Justice, Civil Rights Division, Evaluation of Title VI Enforcement in the Farmers Home Administration of the U.S. Department of Agriculture (November 1980), p. 56 (hereafter cited as Evaluation of Title VI Enforcement).

44. Ibid., p. 39.

45. Ibid., pp. 13, 37-39.

46. U.S., Department of Agriculture, Office of Equal Opportunity (OEO), "An Evaluation of Farmers Home Administration Compliance Review Procedures," (1976), reviewed by USCCR staff in OEO files on Aug. 21, 1981.

found that FmHA did not conduct reviews of direct assistance farm loans. OEO recommended in this report that FmHA revise its procedures to include such reviews, but this has not been done. Compliance review forms documenting onsite field visits still include only Title VI recipients.[47] Thus, there are still no guidelines for ECOA compliance reviews, requiring for example, file reviews of, or interviews with, loan applicants, borrowers (i.e., the recipients of direct assistance), or local farmers to determine if loan programs have been publicized among minority farmers, limited resource loans have been provided to qualified borrowers in need, and credit elsewhere tests have been applied equitably. As explained in chapter 4, these are matters of particular concern to black farmers. While compliance reviewers may examine direct loan files on an informal basis, without specific instructions or forms, cursory reviews would not likely yield findings of discrimination; establishing applicants' comparative credit-worthiness, which is necessary to determine the existence or absence of discrimination, is not a simple process, especially because FmHA has no specific standards for determining loan eligibility.

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47. USDA-FmHA, Form FHA 400-7 (Rev. 5-23-77) OMB No. 40-R3827; USDA-FmHA, Form 400-8 (Rev. 5-24-77) OMB No. 40-R3828.

48. U.S., Department of Agriculture, Office of Equal Opportunity (OEO), A-11 Report, 1980 (hereafter cited as OEO, A-11 Report) reviewed by USCCR staff in OEO files, Mar. 6, 1981. The A-11 report describes activities and expenditures and is submitted to the Office of Management and Budget. "Onsite reviews" include reviews of county office procedures as well as civil rights compliance by Title VI recipients.

Thus, while 4,508 FmHA civil rights "onsite reviews"[48] were conducted in 1980, not one instance of noncompliance with either Title VI or ECOA was found.[49] This finding of 100 percent equal opportunity compliance is particularly remarkable for an agency whose programs are the subject of more than 200 civil rights complaints annually, more than one-half of all such complaints filed against USDA.[50]

The Justice Department found substantial reason to believe that findings of compliance reflected superficial reviews rather than adherence to civil rights laws. According to DoJ:

> Numerable deficiencies in FmHA's compliance review procedures and instructions account for the worthlessness of compliance reviews which bear virtually no results. Although not one of the field personnel we interviewed had ever found an instance of noncompliance, we identified noncompliance situations in each county visited.[51]

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[49] OEO, A-11 Report.

[50] USDA, Office of Equal Opportunity, Equal Opportunity Report: USDA--1980, p. 5 (hereafter cited as Equal Opportunity Report: USDA--1980).

[51] Evaluation of Title VI Enforcement, p. 37.

FmHA National Office Equal Opportunity Staff

The Equal Opportunity Staff (EOS) unit within the National Office of FmHA is responsible for civil rights oversight of FmHA's National, State, and field offices. According to USDA's Administrative regulations, each agency is responsible for "assigning sufficient full time staff resources for the development and implementation of a comprehensive civil rights compliance program within the agency".[52] The Equal Opportunity Staff unit, responsible to the FmHA Administrator, is a key link in ensuring implementation of top management's civil rights policies and priorities. Its essential functions are planning, monitoring, and evaluating FmHA civil rights performance and informing the Administrator of problems within the agency.

However, with only a director and three staff to ensure equal opportunity in direct services provided by more than 2,000 county and district FmHA offices as well as in services provided by Title VI recipients, FmHA has clearly assigned an insufficient number of staff to comply with this regulation. According to the EOS Director, the Farmers Home Administration is "in no position to enforce compliance with civil rights laws."[53]

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[52] USDA's Administrative Regulations 9 AR §22(A)(4)(1976).

[53] Meeting between Farmers Home Administration and Commission staff, Jan. 6, 1982. The EOS Director stated that he had no disagreement with this report's analysis of FmHA's civil rights enforcement.

The impact of EOS, which has no line authority over field or State offices, is negligible. While EOS is responsible for developing a comprehensive review program,[54] it has not monitored or evaluated the compliance program reviews conducted by the field offices, nor performed desk audits; nor does it have a systematic method for conducting its own reviews.[55] In Fiscal Year 1980 EOS conducted only four onsite reviews, described as "outreach efforts;"[56] three investigations were carried over from 1979; no findings of noncompliance were made, and four compliance reviews were still pending at the beginning of Fiscal Year 1981.[57]

Furthermore, according to the Justice Department, "[w]hat should be the principal concerns of the EO Office--training, development of compliance guidelines and standards for bilingual services and outreach programs, and the conduct of special activities and reviews -- have not been properly met."[58] EOS conducted or assisted in 12 compliance review training sessions of field staff during 1980; six of these training sessions were contracted to outside consultants.[59] This training was sharply criticized as inadequate by DoJ. "[T]here is no compliance review manual to provide the necessary instruction and guidance for compliance reviewers; instead, the materials presented are outdated and lack specificity and comprehensiveness."[60]

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[54] 9 AR §22(A)(5)(1976).

[55] Scanlon Interview.

[56] Ibid. Scanlon described these reviews as "outreach," while OEO's A-11 report described them as "compliance investigations."

[57] OEO, A-11 Report. From the report it was not clear if the investigations carried over from 1979 were the same investigations conducted in 1980 and still pending in 1981. EOS staff were unable to clarify the report. Smith and Scanlon Interview.

[58] Evaluation of Title VI Enforcement, p. 10.

[59] OEO, A-11 Report.

EOS is [illegible]o responsible for evaluating minority participation data and State targets for minority loans.[61] State FmHA offices are asked to provide the national office with their loan targets--projected goals of the number of loans they will make, by program type, broken down by race. However, midway through Fiscal Year 1981, EOS had not yet received FY 1981 "projected" targets for a substantial number of States.[62]

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[60] Evaluation of Title VI Enforcement, p. 13. The comments expressed by FmHA county supervisors, at a training course observed by DoJ staff, confirmed that serious prejudices were held by some FmHA personnel. "[O]ne district director said he knew when an applicant came to his office if he would approve the loan request; when asked how to remedy the situation of segregated facilities, one response was that integration cannot be forced, three others said they did not know, and another disagreed that facilities had to be available to everyone; one participant spoke of the continual badgering by the FmHA national office; and in listing possible minority contacts to interview while conducting reviews, the group listed law enforcement officers, bankers, and county commissioners." Ibid., p. 12.

The EOS director states that EOS is in the process of developing training, regulations, and a manual for ECOA enforcement. He hopes to have the regulations issued by the end of Fiscal Year 1982. (Meeting between Farmers Home Administration and Commission staff, Jan. 6, 1982.)

[61] 9 AR §21.

[62] Ras Smith, equal opportunity specialist for FmHA's EOS, interview in Washington, D.C., Mar. 18, 1981.

Similarly, in reviewing minority participation in FmHA loan programs, EOS never has analyzed data pertaining to the limited resource loan program. Despite the particular relevance of this program to minorities, these data, stored on computer, never have been obtained by EOS.[63]

USDA's Office of Equal Opportunity

The Office of Equal Opportunity (OEO), within the Office of the Assistant Secretary for Administration, has authority to develop "a comprehensive program to assure equal opportunity for all persons in all aspects of USDA programs without regard to race, color, national origin, sex or religion..."[64] OEO's program enforcement duties are divided between the Civil Rights Division, and the Complaints and Appeals staff.[65] A third arm of OEO, the Equal Employment Opportunity Division, deals with internal USDA employment and is not discussed here.

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63. Ibid. Mr. Smith stated his belief that such data did not exist. However, USCCR staff have obtained some of these data, which are analyzed in chapter 4.

64. 9 AR §2.

65. A reorganization of USDA's Office of Equal Opportunity was proposed in August 1981 but was not yet approved as of Jan. 25, 1982. The reorganization places the Complaints and Appeals staff within the Civil Rights Division, but does not appear to affect the overall functions of the Division. Bill Payne, Acting Chief, Civil Rights Division, OEO, USDA, interview in Washington, D.C., September 25, 1981.

1. Civil Rights Division

The Civil Rights Division is responsible for coordinating, monitoring, and enforcing compliance with discrimination prohibitions in USDA programs and activities. It coordinates civil rights impact analyses of major USDA policy decisions and develops policies and program approaches implementing civil rights laws in USDA programs. The Division also evaluates data systems "designed to target and measure" minority and female participation in the Department's programs.[66] The Division is divided into two branches: Program Planning and Evaluation, and Compliance.

While many of the Civil Rights Divisions' responsibilities overlap with responsibilities of agency (such as FmHA) Equal Opportunity staff, the units basically operate independently of each other with very little cooperation or coordination. There is no direct line of authority between them.

a. Program Planning and Evaluation Branch

The Program Planning and Evaluation Branch (PP&E) analyzes minority program participation data furnished by program agencies and compiles the annual Equal Opportunity Report: USDA Programs. In addition, PP&E is responsible for evaluating minority participation targets for all agency programs and reviewing agency civil rights impact statements.[67] These responsibilities evolved

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66. Equal Opportunity Report: USDA--1980, p. 24.

67. For a more detailed discussion of civil rights impact statements, see text accompanying footnotes 70-71 in this chapter.

over the past decade, as successive Secretaries attempted to develop a meaningful civil rights program.

In September 1969 the Secretary of Agriculture issued Secretary's Memorandum No. 1662, "USDA Policy on Civil Rights."[68] The memorandum called for civil rights training among agency heads and supervisory staff at all levels; developing base data for measuring and evaluating the quality of program services delivered to minority groups; eliminating segregation and discrimination in programs and employment; and "[c]orrect[ing] programs that have been conducted in ways that permit economic barriers or social inhibitions to limit participation of certain racial, color, or nationality groups, even though such programs are announced as available to all persons."[69]

A series of supplemental memoranda followed over the next 7 years. To increase USDA services to minorities, Supplement 5 to Memorandum No. 1662, issued in May 1972, directed agencies to incorporate targets for minority services into program planning:

> Progress in the delivery of USDA program benefits to minority groups has been uneven among agencies and programs, with some Agencies still far short of achieving parity in access to and participation in programs....

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[68] U.S., Department of Agriculture, Office of the Secretary, Secretary's Memorandum No. 1662, "USDA Policy on Civil Rights," Sept. 23, 1969.

[69] Ibid., pp. 1-3.

> ...USDA Agencies with Title VI or direct assistance programs will incorporate targets for the delivery of program benefits to minority groups into their advance program planning procedures. The systematic inclusion of minority considerations in formal program planning efforts will serve two major purposes: (1) promote parity of participation by minority groups in the benefits of USDA programs, and (2) provide approved targets against which performance can be measured.[70]

The Secretary, in a further effort to increase agency awareness of, and responsiveness to, relevant civil rights concerns, issued, in June 1976, another supplement to Memorandum No. 1662, entitled "Civil Rights Considerations of Policy Action."[71] This memorandum required agency heads to review proposed policies, programs, legislative actions, and regulations for their potential civil rights impact:

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70. U.S., Department of Agriculture, Office of the Secretary, Secretary's Memorandum No. 1662, Supp. 5, "USDA Policy on Civil Rights," May 18, 1972, p. 1 (hereafter cited as Secretary's Memorandum No. 1662, Supp. 5). Targeting services for minorities is also required by USDA Administrative Regulations at 9 AR §21(B)(1976).

71. U.S., Department of Agriculture, Office of the Secretary, Secretary's Memorandum No. 1662, Supp. 8, "Civil Rights Considerations of Policy Actions," June 28, 1976 (hereafter cited as Secretary's Memorandum No. 1662, Supp. 8).

> This supplement to Secretary's Memorandum No. 1662 provides a mechanism whereby inadvertent discrimination in proposed major policy actions can be detected and ameliorated with off-setting measures or alternative actions before implementation. To assure that adequate consideration is given to the civil rights implications of all proposed major policy actions, Agency Heads will be responsible for preparing a civil rights impact statement for all such actions.[72]

The Assistant Secretary for Administration and the Office of Equal Opportunity were given major responsibility for ensuring implementation of Secretary's Memorandum No. 1662 and its supplements.[73] However, in the absence of a direct line of authority between the Assistant Secretary for Administration and other agency administrators (see organizational chart, Figure 5.1), the required procedures appear to have broken down, and the objectives of the Secretary's Memorandum No. 1662 and its supplements have yet to be accomplished in FmHA programs.

For example, the Office of Equal Opportunity is responsible for establishing standards for evaluating minority participation in, and targets for, USDA program services.[74] And yet, minority participation in limited resource loan programs has not been evaluated by either OEO or, as noted above, FmHA. Targeting has not been meaningful, as demonstrated by the analysis of the farm ownership loan program in chapter 4 and the failure of FmHA's EOS to receive State targets for 1981 in a timely fashion. Furthermore, targeting is nonexistent[75] in programs such as the economic emergency and disaster emergency loan programs, which accounted for more than 75 percent of the total dollars loaned by FmHA in 1981.[76]

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[72] Ibid., p. 1.

[73] See footnotes 74 and 77.

Additionally, under Supplement 8 of Memorandum No. 1662, the Assistant Secretary for Administration was to issue guidelines for agency preparation of civil rights impact statements and to provide assistance when needed. Impact Statements prepared by the agencies were then to be submitted to the Assistant Secretary for Administration for review and returned within 5 working days "with approval or for reconsideration where unfavorable civil rights impact exists without sufficient off-setting action."[77]

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[74] OEO is assigned responsibility to provide instruction, counsel, and evaluation reports regarding minority participation and targeting in Secretary's Memorandum No. 1662, Supp. 5 and at 9 AR §§3(T)-(U), 21(1976).

[75] U.S., Department of Agriculture, Farmers Home Administration, Computer data entitled "Racial Program Participation by Fiscal Years," Report Code 631 (hereafter cited as Report Code 631).

[76] Report Code 631 (FY 1981).

[77] Secretary's Memorandum No. 1662, Supp. 8, p. 2.

While very general guidelines were issued,[78] the requirement for civil rights impact analyses has not been fully implemented. Despite the instructions of the Secretary's Memorandum, OEO has no line authority over any agency, and, in practice, proposed changes and new policies may be and are implemented without OEO's approval. OEO relies on the initiative of each agency to identify proposed policies and changes in program activities. This reliance on agency initiative does not guarantee that OEO staff intercepts even the most important or relevant policies as they are being proposed. In 1980, only 47 policies were reviewed compared to more than twice that number (120) reviewed in 1979.[79] Without a comprehensive list of proposed policies, programs, legislative actions, and regulations there is no way to determine what proportion of USDA proposals OEO reviews.

USDA has, in fact, proposed major policy changes with serious civil rights implications absent any review by OEO. The President's 1982 budget proposal to abolish FmHA's low interest, limited resource loans is a critical example.[80] If the President's proposal had been adopted by Congress, the resulting legislation would have eliminated the only FmHA farm loans specifically intended to benefit minority farmers. No civil rights impact analysis was conducted of this major policy proposal as required by Supplement 8 of Secretary's Memorandum No. 1162, despite the fact that such a policy would clearly serve to speed the loss of minority operated farms in this country.[81]

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[78] U.S., Department of Agriculture, Office of Equal Opportunity, "Guidelines and Instructions for Preparing a Civil Rights Impact Statement," (undated).

[79] William Payne, Chief, Program Planning and Evaluation Branch, Office of Equal Opportunity, USDA, interview in Washington, D.C., Nov. 12, 1980.

[80] Dwight Calhoun, Acting Administrator, Farmers Home Administration, USDA, testimony, Hearing before the U.S. House Committee on Appropriations, Subcommittee on Agriculture, Rural Development and Related Agencies, 97th Cong., 1st Sess., Mar. 19, 1981 (p. 8 of prepared statement).

Thus, while the Program Planning and Evaluation Branch has major responsibility for designing systems to evaluate and target minority participation in USDA programs and for analyzing civil rights impact of USDA proposed policies, implementation of these responsibilities has fallen short of its potential.

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81. Congress kept the program but lowered the Fiscal Year 1982 funds authorized for limited resource loans from 25 percent to 20 percent of all FmHA farm ownership and operating loans. In addition, Congress raised interest rates for limited resource farm ownership loans to one-half the cost of money to the government and limited resource farm operating loans to 3 percentage points below the cost of money. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, Sec. 160(a)(3)(B), (b)(3), 95 Stat 377, reprinted in U.S. Code Cong. & Ad. News 377 (Supp. 7, Sept. 1981). This new legislation will reduce the rate at which limited resource loans are made in Fiscal Year 1982 and make it increasingly difficult for black small farmers to afford and qualify for such loans due to higher interest rates.

b. Compliance Branch

The Compliance Branch has a staff of nine compliance reviewers, three supervisors, and the Branch Chief. Each year the branch conducts approximately 80 compliance reviews of various USDA agency field offices; in Fiscal Year 1980, 24 reviews of FmHA district and county offices were conducted in eight States.[82] Compliance review sites were selected based on information gathered by OEO's Complaints and Appeals Division, program participation data evaluated by PP&E, and census data.[83] Reviews included examination of applications and loan files for Title VI programs and direct assistance; reviews of documented outreach efforts; "interviews with district and county FmHA personnel, grassroots organization officials, minority program borrowers and beneficiaries; and onsite inspection of rural rental housing units and FmHA financial subdivisions."[84] According to an OEO report, the compliance investigations of FmHA found the following "deficiencies":

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[82] Equal Opportunity Report: USDA--1980, p. 28. FmHA has more than 2,000 district and county offices nationwide. USDA, Farmers Home Administration, "A Brief History of the Farmers Home Administration," January 1981, p. 1.

[83] James Hood, Chief, Compliance Branch, Office of Equal Opportunity, USDA, interview in Washington, D.C., Mar. 6, 1981.

[84] Equal Opportunity Report: USDA--1980, p. 28.

Findings	Instances
(1) Lack of regular, systematic outreach program efforts.	12
(2) "And Justice for All" posters not displayed in county and district offices.	7
(3) Equal Employment Opportunity (EEO) posters not displayed in Title VI recipients' district facilities.	6
(4) Civil Rights training not provided to county and district personnel.	9
(5) Equal Credit Opportunity Act (ECOA) training not provided to county and district personnel.	5
(6) Compliance reviews not conducted of Title VI programs.	3
(7) Lack of nondiscrimination statement in news items of public interest.[85]	24

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[85] Ibid., p. 29. The OEO report does not define "deficiencies."

Investigation reports also frequently noted the following:[86]

-- The rate of minority participation in FmHA farm loan programs was not proportional to their population in the community served.[87]

-- County offices did not set or attempt to meet targets for minority loans.

-- County FmHA offices were not employing minorities in proportion to the population in the community served.[88]

-- Letters of loan rejections did not always contain the notification of ECOA's prohibition against discrimination, and the identification and address of the Federal Trade Commission as the agency with ECOA enforcement responsibility.[89]

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86. USCCR staff review of files, USDA/OEO Compliance investigations of FmHA, in Washington, D.C., Apr. 23, 1981.

87. This is not considered by OEO to be a finding of discrimination. OEO has not determined what the eligible population base is for farm loans and leaves this determination to FmHA.

88. This has not been established as a criteria for civil rights compliance.

89. Required by Regulation B, at 12 C.F.R. §202.9(a)(2)(1981).

The Office of Equal Opportunity sends its compliance investigation findings and recommendations to the FmHA Equal Opportunity Staff Director for follow up by FmHA line management. However, there is no direct line of authority between OEO and FmHA. Based on a review of the compliance files, there is little recorded followup by the Compliance Branch, and it is difficult to determine what actions have actually been taken by FmHA to correct problems once they have been identified.[90]

For example, a Compliance Branch review of a North Carolina FmHA county office revealed numerous "deficiencies," including inordinate delays between application and loan approvals, and other irregularities, in the processing of loans for blacks.[91] OEO attempted to correct the problems: "Almost immediately after the review, a discussion ensued between FmHA officials and OEO specialists to rectify the... deficiencies. This resulted in farmers obtaining loans to continue the operation of their farms and retain land ownership."[92] However, no followup has been conducted by the Compliance Branch to determine if necessary changes have been made in the ongoing practices of this county office.[93] FmHA's Deputy Administrator for Farm and Family Programs has indicated that he never saw OEO's compliance review report, nor had knowledge of some of its findings. He did not require that corrective actions be taken by the affected FmHA office.[94] Thus, without followup by the Compliance Branch, there is no way to know whether deficiencies in the operations of this FmHA office continue to contribute to the loss of black-owned land in North Carolina.

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[90] USCCR staff review of files, USDA/OEO Compliance Investigations, in Washington, D.C., Apr. 23, 1981.

[91] Equal Opportunity Report: USDA Program 1980, pp. 30-31.

[92] Ibid., p. 31.

2. Complaints and Appeals Division

As the subject of 202 complaints out of a total of 393 filed against USDA in Fiscal Year 1980,[95] the Farmers Home Administration leads all USDA agencies in civil rights complaints. Eighty-five of these complaints involved farm operating or farm ownership loan programs.[96] A review of the complaint log in December 1980 revealed that 113 of 198 FmHA complaints filed in the calendar year alleged racial discrimination.[97]

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[93] USCCR staff review of USDA/OEO compliance review file, "FmHA-7600-Gates and Hertford Counties, North Carolina - Special Projects," Washington, D. C., Aug. 21, 1981. At least one of the black farmers involved in bringing about this special review has received a notification of foreclosure possibly indicating that problems in this office have not been resolved. Robert L. Daughtry, FmHA county supervisor, letter to Mattie J. Norman, Apr. 17, 1981, (hereafter cited as Daughtry Letter).

[94] Meeting between Farmers Home Administration and Commission staff, Jan. 6, 1982. The Deputy Administrator said he personally looked into the discrimination complaints filed against this county FmHA office and was satisfied that the complainants were not treated in a discriminatory manner.

[95] Equal Opportunity Report: USDA--1980, p. 5.

The Complaints and Appeals staff (C&A), within OEO, has been delegated responsibility for handling all complaints (except employment) alleging discrimination in USDA programs.[98] As a matter of policy, complaints received at the local office level, or by the FmHA national office, are referred to C&A staff in the Office of Equal Opportunity to ensure a professional and impartial investigation. In practice, however, with a staff of five professionals and one supervisor, C&A actually investigates fewer than one-third of all complaints it receives.[99] The remaining

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96. Ibid., p. 7.

97. USCCR staff review of the Complaints and Appeals Division complaint log, in Washington, D.C., Dec, 8, 1980 (hereafter cited as C&A complaint log). Of the remaining complaints, 39 alleged discrimination based on sex, 23 based on marital status, 17 based on national origin, and 6 based on religion.

98. USDA Administrative Regulations authorize the Director, Office of Equal Opportunity, to set "procedures for handling complaints alleging discrimination in USDA programs and activities, except Federal employment, and [to approve] corrective action." 9 AR §3 (R)(1976).

99. Dana Froe, Chief, Complaints and Appeals Division, interview in Washington, D.C., Dec. 8, 1980 (hereafter cited as Froe Interview.) According to Froe, C&A's budget calls for 20 onsite investigations per staff person per year -- a total of 120 trips. A USDA task force assigned to study C&A's caseload in 1978 found that C&A needed 22 staff to investigate all USDA complaints. As an alternative to hiring these additional staff, the task force recommended that C&A receive additional funds to hire private contractor investigators.

complaints are either sent back to the field offices through the relevant agency, for "preliminary inquiry"--requesting specific information--or are contracted outside of USDA for investigation.[100] According to the C&A Chief, the unit selects for its own investigation those complaints which appear on their face to have the most valid claims, while sending back to the field office those complaints which appear to have less merit. He acknowledges that sending complaints back for inquiry to the field offices, which are themselves the subjects of the complaints, presents an inevitable conflict of interest[101]-- which may explain why "most complaints referred [back] to the agencies for preliminary inquiry are closed on the basis of the inquiry report findings."[102]

Despite the fact that more than half of all farm loan complaints[103] are sent back to FmHA for "preliminary inquiry" and about 90 percent of these complaints are closed without OEO investigation,[104] the average[105] time span between receiving and closing all farm loan complaints (those with and without investigations) is 5 1/2 half months.[106] As of January 1981, 104 of 134 active direct assistance and Title VI complaints filed against FmHA were pending more than 90 days.[107] As of December 1980, 16 cases remained open from 1979, 2 from 1978, and 1 from 1977.[108]

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[100] Ibid. According to Froe, 81 complaints were contracted out for investigation in FY 1980 to persons retired from OEO or USDA's Office of Inspector General.

[101] Ibid.

[102] Evaluation of Title VI Enforcement, p. 49, n. 94.

[103] C&A complaint log Sept. 25, 1981.

[104] Dana Froe, interview in Washington, D. C., Sept. 25, 1981.

[105] The "average" was both the arithmetic mean and the median time span for complaints.

There are no regulations requiring processing direct assistance complaints within any specific timeframes.[109] Regulations governing Title VI complaints require that agencies asked to conduct preliminary investigations report their findings to OEO within 30 days.[110] The regulations, however, do not provide timeframes for completing Title VI investigations conducted by OEO.[111]

The complaint process appears to be ineffective as well as untimely. According to the C&A Chief, the unit made only one finding of discrimination in 1980, and this involved a case pending

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106. C&A complaint log Sept. 25, 1981.

107. James Frazier, Director, Office of Equal Opportunity, USDA, letter to Gordon Cavanaugh, Administrator, Farmers Home Administration, USDA, Jan. 16, 1981 (copy reviewed by USCCR staff in OEO, USDA files).

108. C&A complaint log Dec. 8, 1980.

109. Provisions for the processing of direct complaints are found at 7 C.F.R. §15.52(b)(1980) and 9 AR §52 (1976).

110. 9 AR 51.

111. Id.

since 1969.[112] Only three cases resulted in corrective action during 1979.[113]

Even when C&A or its contractors conduct its own investigation, the outcome of the complaint depends heavily on the responsiveness of the agency subject to the complaint. C&A complaint investigation reports do not present findings or recommend corrective action.[114] They simply provide a written record of affidavits and interviews, without analyzing or offering an interpretation of the events.[115] This written record is transmitted, along with a very brief summary of the investigation, to the agency under investigation. The agency is then asked to respond to this investigation report within 30 days.[116] Review of these files suggests that FmHA may have a tendency to reassert its position in cases without necessarily responding to relevant issues raised by complainants.[117] For example, FmHA may simply refer to the regulation which provided a legal basis for denying a loan to the complainant, without responding to charges that the complainant was discouraged by FmHA from filing a loan application, that FmHA did not make a sincere effort to assist the applicant in filing an application or "Farm and Home Plan" which would comply with FmHA requirements, or that FmHA did not inform the applicant of all possible types of loan assistance.[118]

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[112] Froe Interview. According to the Equal Opportunity Report: USDA--1980, two complaints "resulted in a finding of discrimination and some corrective action....Since judgement factors and other intangibles make it extremely difficult to determine discrimination, the number of proven cases of discrimination is small. However, a substantial number of cases have resulted in corrective action...." Ibid., p. 7.

[113] Equal Opportunity Report: USDA--1979, p. 14.

[114] OEO does have the authority to make findings of discrimination. 9 AR §51(1976).

[115] USCCR staff review of C&A complaint files in Washington, D.C., Sept. 25, 1981, (hereafter cited as C&A complaint files).

[116] 9 AR §51 (1976).

The Department of Justice reported that USDA's complaint regulations, scattered in various agency guidelines, are completely inadequate; they "do not set forth the specific steps in the complaint process, including notification of the complainant; interview procedures; essential records for review; timeframes for each step; and a system of monitoring the complaint."[119] The Justice Department's review of seven C&A Title VI complaint files found

> ....no comparative data to show how other applicants or beneficiaries, similarly situated to the complainant, were treated; nor was there any indication that the reviewers had examined project records. The material contained in the

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117. C&A complaint files Sept. 25, 1981.

118. Required under FmHA regulations 7 C.F.R. §1910.3(a),(c) and §1910.7.

119. Evaluation of Title VI Enforcement, p. 51.

> complaint files did not provide justification for the findings made. Rather, it seemed that an investigation proceeded until the point was reached where the action taken by the recipient [Title VI entity] was able to be substantiated.[120]

A Commission staff review of 10 randomly selected complaints filed against FmHA also revealed the inefficacy of the complaint process.[121] For example, one complaint, filed in November 1979, claimed racial discrimination in FmHA rental housing in Mississippi. A C&A investigation reported the housing units to be occupied by whites only despite numerous affidavits from blacks testifying that they had placed their names on waiting lists prior to whites who had been subsequently admitted to the rental units. C&A summarized these facts, without specifically stating any conclusion or finding of discrimination, and sent it back to the local FmHA office for "corrective action" in July 1980. No specific action or remedy was suggested by C&A. As of December 1980, there was no record in the file of any finding or corrective action taken by either C&A or FmHA regarding the complaint.[122]

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[120] Ibid., p. 50.

[121] C&A complaint files Dec. 8, 1980.

[122] Under regulations governing Title VI complaints, "[a]gency heads will advise OEO within 30 days of their recommendations and proposed actions. In cases where corrective action cannot be completed within 30 days, the agency will submit a timetable of planned actions and a progress report every 30 days to OEO. The adequacy of corrective action in cases where discrimination is established will be determined by the Director, OEO." 9 AR §51 (1976).

The lack of a swift and effective complaint process can cause great harm to individuals with grievances in need of prompt resolution. For minority small farmers, an unreasonable delay in processing an FmHA complaint can cost them the loss of the season's crop, and ultimately their farms.

Black farmers in North Carolina filed a discrimination complaint against FmHA in February 1980.[123] The Compliance Branch of OEO conducted a special investigation into the practices of this local FmHA office 2 months after the complaint was filed and found evidence of a variety of discriminatory actions, including discrepancies in the real estate appraisal of farmland owned by blacks, inordinate waiting periods between applications and loan approval for blacks, absence of deferred loan payment schedules for blacks; requirements that some blacks agree to voluntary liquidation of their property (should they default on their loans) as a loan condition, and disparities in the number and amount of economic emergency loans made to blacks.[124] However, the Compliance Branch did not provide the complainants with these findings.[125] The Complaints and Appeals Branch conducted its own investigation, but did not respond to the complainants until June 1981.[126]

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[123] John Garland Letter to James Frazier, Feb. 8, 1980.

[124] Equal Opportunity Report: USDA Programs 1980, p. 30, and USCCR staff review of USDA/OEO compliance review file, "FmHA-7600-Gates and Hertford Counties, North Carolina-Special Projects."

[125] The findings were presented to the Associate Administrator of FmHA in a meeting arranged by the Assistant Secretary for Administration. Memorandum from James Frazier, Director, Office of Equal Opportunity, USDA, to Joan Wallace, Assistant Secretary for Administration, USDA, June 23, 1980.

A year after filing the original complaint, the remaining black farmers filed another complaint, alleging that the local FmHA office was retaliating against them for filing their original, still unresolved, complaint.[127] Several months later, FmHA notified one complainant that it was proceeding with foreclosure on the family's farm.[128] After the notice of foreclosure, and 1 1/2 years after the original complaint was filed, C&A finally responded to the complainant with its finding of "no evidence of racial discrimination."[129] No mention was made of the earlier findings made by the Compliance Branch.

The State FmHA Director, who played a major role in this complaint determination, apparently had little knowledge of the earlier findings made by the Compliance Branch. He wrote, "...although we do not have a copy of their (Compliance Branch) report, it is our understanding that this review found no evidence of discrimination in the operations of the program."[130]

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126. James Frazier, Director, Office of Equal Opportunity, letters to Mrs. Mattie Norman and Mr. Willie Matthews, June 19, 1981 (hereafter cited as Frazier Letter to Norman and Matthews). In the meantime, one of the complainants died and his wife had a nervous breakdown due, according to the family, to the stress caused by the threat of losing their farm. John Garland, Telephone Interview, Apr. 1, 1981.

127. John Garland, Letter to James Frazier, Feb. 9, 1981.

128. Daughtry letter.

129. Frazier letter to Norman and Matthews.

130. James Johnson, State Director, North Carolina, Farmers Home Administration, USDA, letter to William Tippins, Chief, Equal Opportunity Staff, Farmers Home Administration, USDA, Sept. 3, 1980.

Summary

FmHA's civil rights enforcement is spread thinly among various offices at several levels. The problems inherent in this organizational structure of multileveled, diffuse enforcement are: 1) essentially nonexistent accountability; 2) lack of clear lines of authority between and across the various levels of enforcement; and 3) failure to administer necessary sanctions. Compliance reviews conducted by county and district FmHA staff appear to be superficial, at best; compliance reviews conducted by National FmHA Equal Opportunity staff are too few and far between; compliance reviews conducted by USDA's Office of Equal Opportunity lack sufficient followup to ensure that corrective action is taken; and complaint investigations fail to reach expeditious and effective resolutions and often involve conflicts of interest within FmHA.

Civil rights goals have not been incorporated into regular management and program objectives, as intended under the Secretary's Memorandum No. 1662. Minority loan targets often are not set or reviewed in a timely or meaningful fashion, and no data concerning minority participation in the limited resource loan program have been obtained or evaluated. Similarly, USDA and the Office of Equal Opportunity have ignored the civil rights impact of significant proposed policies, despite the process of policy review created by the Secretary.

USDA and FmHA have failed to integrate civil rights goals into program objectives and to adequately use enforcement mechanisms to ensure that minorities are provided equal opportunities in farm credit programs.

Chapter 6

Conclusion, Findings, and Recommendations

While all family farmers suffer the threat of displacement from their land, the rate of decline of black-operated farms over the last decade was alarming--57 percent--a rate of loss 2 1/2 times that for white-operated farms. Only 57,271 black-operated farms remained in 1978 compared to approximately 926,000 black-operated farms in 1920. Thus, almost 94 percent of the farms operated by blacks have been lost since 1920, and at the current rate of loss there will be fewer than 10,000 black farmers in the United States at the end of the next decade.

This tragic decline of black farms is rooted in our Nation's racial history, especially in the South. As related in earlier chapters, freedom from slavery brought little economic independence to blacks. Rather than land, most blacks inherited poverty, illiteracy, and little opportunity for advancement. Sharecropping, which should have been a stepping stone to land ownership, instead ensnared blacks in a scheme designed to maintain the status quo. Whites violently resisted any social, economic, or educational improvement on the part of blacks that might have led to disruption of the social order. Racism in extension of credit and the selling of land resulted in smaller and less productive landholdings for those blacks who were able to buy their own farms. The system of credit inextricably tied blacks to cotton, and both when cotton fell prey to the boll weevil and when the market was glutted, blacks were least cushioned by institutional support. Fear and illiteracy rendered blacks easily exploited. What should have been a secure position in agriculture turned out to be a struggle merely for survival. And as black farmers struggled for survival, they received inadequate support from government programs which failed to break with a history and environment of racism. Blacks were denied an equitable share in public education, general government relief, and special farm programs--and left disproportionately vulnerable to seemingly neutral gross economic and agricultural trends and policies.

Those blacks who, against odds, have survived as farmers continue to suffer consequences related to the relatively small size of their marginal landholdings. Priorities for agricultural research (established and supported in large part by State and Federal funds), economies of scale related to mechanization, increased production resulting from technology, government farm price and income supports, tax benefits, and institutional lending practices all are geared to large scale farming. The benefits accruing to large farm operators, who are predominantly white, place black small farm operators in increasingly disadvantageous and noncompetitive positions. The disparities resulting from these structural biases are compounded by discrimination, both real and perceived. This discrimination perpetuates black's historical distrust of the legal system and lending institutions, inhibiting some blacks from seeking credit and expanding their farm operations to make them more viable, and even from writing wills.

The Farmers Home Administration, with a historical mission to preserve and enhance the livelihood of the family farmer and a budget for farm loans that exceeded $6 billion in Fiscal Year 1981, is in a unique position to assist black farmers. FmHA, however, has not given adequate emphasis or priority to dealing with the crisis facing black farmers today. In 1981 blacks received only 2.5 percent of the total dollar amount loaned through FmHA's farm credit programs. While statistics on the rate and amount of loans awarded to blacks do not alone demonstrate discrimination, clearly, the level of assistance provided is insufficient to correct the effects of past inequities or to reflect the urgency of the problem at hand.

Of particular concern is the limited resource loan program. Congress expressly intended this program to benefit minorities, women, low-income and beginning farmers -- those who have had difficulty obtaining credit in the past. With lowered interest rates, this is the only farm loan program designed specifically to offset, to a small degree, the historical and present circumstances that militate so strongly against the survival of black farms. At its best, the limited resource loan program would not begin to tip the scales against the majority of loan, commodity, research, and tax programs that overwhelmingly favor middle and upper income farmers who are predominantly white. It has the potential, nonetheless, to provide the means by which many black farmers could continue to work their land.

However, it appears that this potential has not been realized. Even the limited resource loan program has not been administered to the benefit of black farmers. The majority of black FmHA farm loan borrowers are not provided these low-interest, limited resource loans, but instead receive their loans at regular interest rates. In some States, black borrowers received proportionally fewer limited resource loans than white borrowers.

There are indications that FmHA may be involved in the very kind of racial discrimination that it should be seeking to correct. Perceptions held by black farmers and community-based organizations, along with complaints and compliance review findings and analysis of limited resource loan data all suggest that FmHA, in some instances, contributes to the problem rather than to its amelioration.

Civil rights enforcement within USDA does not address effectively this problem. Enforcement is dispersed at various levels of USDA administration, without clear lines of authority and accountability. Internal investigations seldom find noncompliance; sanctions are rarely applied. Compliance reviews conducted by local FmHA staff often involve a conflict of interest and reflect inadequate motivation and training; compliance reviews conducted by

USDA's Office of Equal Opportunity and FmHA's equal opportunity staff are too few to have an impact nationwide, and there is little evidence of followup to confirm that needed action has been taken to correct violations where they have been found; complaint resolutions appear to be ineffective and untimely.

While compliance reviews are of critical importance, they cannot be relied on as the sole enforcement mechanism or motivating force behind civil rights compliance. It is essential that civil rights concerns and goals be incorporated into regular program and management objectives. Setting minority loan targets is one necessary programmatic step toward ensuring that genuine efforts are made to inform minorities of FmHA programs and that minorities are provided every possible opportunity to obtain necessary financing for which they are qualified. However, FmHA's failure to develop an effective civil rights effort is reflected in the fact that county offices are not asked to evaluate local minority needs or to participate in setting and striving to meet minority loan targets. In some States, minority loan targets in 1981 declined below the number of minority loans actually made in 1980.

To prevent the complete disappearance of blacks as farm operators, it will be necessary for the Farmers Home Administration to establish, and strive towards, more ambitious goals. While civil rights goals and enforcement cannot overcome all of the disadvantages that weigh against black farmers, these efforts, though meager in the overall context of American agriculture, nonetheless may contribute significantly to the lives of black farmers. The Commission recognizes that FmHA interprets its responsibilities narrowly, as though it were strictly a banking institution without a social function. However, as an agency whose mandate is to provide supervision and loans for essential needs to farmers who cannot obtain credit elsewhere, the Farmers Home Administration has not only the jurisdiction, but the responsibility, to make every effort to ensure the survival of black farming in America.

Hitherto, there has been no significant Federal response to halt the alarming rate at which blacks are losing their farms. The need for intervention is immediate. To address, at least partially, the effects of discrimination that inhibit the success of minority farmers, special affirmative efforts must be made to enhance the viability of minority operated farms. Following are Commission recommendations for action which respond to findings made in this report.

Findings and Recommendations

1. Finding

The current rate of decline of black-operated farms in the United States is 2 1/2 times the rate of decline for white-operated farms. If the rate of black land loss continues unabated, there will be fewer than 10,000 black farmers at the end of the next decade. With an historical mission to preserve and enhance the livelihood of those family farmers in need who cannot obtain credit from other sources, the Farmers Home Administration of the U.S. Department of Agriculture is in a unique position to provide assistance that could prevent the loss of black farms. However, only 2.5 percent of the total amount loaned through FmHA's farm credit programs in FY 1981 was awarded to black farmers. Moreover, in each farm loan program, the proportion of loans made to blacks declined between 1980 and 1981.

In order to ensure that loans are provided to disadvantaged farmers, Congress, in 1978, created limited resource loans. Twenty-five percent of all farm ownership and farm operating loans were to be targeted by FmHA as limited resource loans to low-income farmers under special terms and at reduced interest rates. Congress specifically identified minority farmers as among those who need special assistance and as intended beneficiaries of these loans. However, allegations have been made that FmHA loans are sometimes inappropriately made to farmers who would be able to obtain credit elsewhere if required to do so, and that limited resource loans are sometimes awarded to those not truly in need.

The Farmers Home Administration and USDA's Office of Equal Opportunity have failed to obtain and evaluate data on minority participation in the limited resource loan program. Incomplete limited resource loan data obtained by Commission staff reveal that the majority of blacks receiving farm operating loans did so at regular interest rates rather than under the special limited resource loan provisions intended for farmers who would have difficulty repaying loans at regular interest rates. In some States, black borrowers received proportionately fewer loans at low-interest rates than white borrowers. Thus, the available data appear to substantiate the concerns raised by some black farmers and others who criticize FmHA for providing low interest loans to well-established, predominantly white farmers, further compounding the disadvantageous and noncompetitive position of black and small farmers.

Recommendations

Congress should conduct oversight hearings on the extent to which USDA policies and programs address the problems related to the loss of black-operated farmland. In particular, Congress should examine the administration of limited resource loans to determine if these loans are being made for the purposes which, and to those whom, Congress intended.

The Farmers Home Administrator should revise FmHA regulations to ensure that farm loans are provided to those for whom Congress intended. For example, FmHA regulations should:

-- require stricter "credit elsewhere" tests to determine if credit is available to applicants from other sources;

- -- provide, for purposes of eligibility, a more specific definition of a "limited resource borrower."
- -- require documented outreach to minority and small farmers informing them of special loan programs, particularly the limited resource loan program.

2. Finding

There has been no significant Federal effort to halt the loss of black-operated farms. Within USDA, interagency efforts to assist small farmers have not been targeted towards minorities. Furthermore, those activities geared towards small farmers have lacked direction, specific goals, systematic program evaluation, coordination and communication among agencies, and flexibility in program guidelines and regulations necessary for their success.

Recommendation

The Secretary of Agriculture should provide for the development and implementation of a coordinated Department-wide program designed to assist minority farmers. All USDA agencies should be advised of the special significance and urgency of increasing and strengthening services to minority farmers. Agencies should be required to develop plans for this purpose, with activities and goals which can be measured and evaluated. Special emphasis should be placed on outreach to minorities. Agencies should be instructed to identify alternative program approaches and changes in policies and procedures which, if implemented, would support the continued existence and enhance the viability of black-operated farms.

3. Finding

The systematic consideration of minority needs and concerns in policy formulation and program planning is essential for a meaningful civil rights effort. For this reason, USDA's Secretary's Memorandum No. 1662, "USDA Policy on Civil Rights", and its supplements, require that all USDA agencies collect and evaluate accurate minority program participation data; set minority targets in advance of the program year; and evaluate all proposed policies and procedures for their civil rights impact. However, Secretary's Memorandum 1662 and its supplements have not been fully implemented. In particular, minority program participation targets have not been set in advance of the program year and policies which would significantly affect minorities have been proposed without civil rights impact analysis.

Recommendation

The Secretary of Agriculture should implement all USDA civil rights policies and regulations. In particular, the Secretary should reaffirm the policies and objectives of the Secretary's Memorandum No. 1662 and its supplements. The Secretary should establish procedures (e.g., requiring that the Assistant Secretary of Administration "sign-off" on new policies and procedures) to ensure that Office of Equal Opportunity review and approval is obtained prior to their implementation.

4. Finding

The Equal Credit Opportunity Act (ECOA) prohibits discrimination by lenders (including the Farmers Home Administration) on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance benefits, and good faith exercise of rights under the Consumer Credit Protection Act. The Federal Trade Commission (FTC) is authorized to enforce compliance with ECOA in direct loan programs administered by the Farmers Home Administration. However, the FTC does not monitor FmHA's compliance, nor does it investigate all complaints. And, although the FTC is empowered to issue regulations and guidelines governing enforcement, it has not done so. In the absence of any guidance and oversight by the FTC, neither USDA nor the Farmers Home Administration has developed an adequate ECOA enforcement program.

Recommendation

The Federal Trade Commission should evaluate FmHA's compliance with ECOA and issue regulations and guidelines governing implementation of compliance reviews and complaint investigations to be conducted by the FTC, USDA, and FmHA.

5. Finding

USDA's Office of Equal Opportunity has Department-wide responsibility for developing a comprehensive program to ensure equal opportunity in USDA programs. However, OEO has failed to monitor, set standards, or develop guidelines for agency civil rights enforcement of the Equal Credit Opportunity Act. Furthermore, in its own enforcement activities, OEO has failed, in some cases, to respond in a timely and effective manner.

Recommendation

The Director of USDA's Office of Equal Opportunity should:

-- develop regulations, guidelines and training pertaining to enforcement of the Equal Credit Opportunity Act;

-- require collection and evaluation of limited resource loan beneficiary data broken down by race, ethnicity, and sex;

-- establish specific time-frames for initiation and completion of complaint investigations and compliance reviews;

-- establish procedures for follow-up regarding findings of non-compliance in complaint investigations and compliance reviews.

6. Finding

The Farmers Home Administration lacks systematic and effective procedures for ensuring civil rights enforcement. In particular, FmHA has failed to develop guidelines and conduct reviews monitoring FmHA's compliance with the Equal Credit Opportunity Act. Similarly, FmHA has failed to set meaningful minority participation targets in a timely manner and to obtain and evaluate data on minority participation in the limited resource loan program.

Recommendation

The Farmers Home Administrator should:

- -- require that targets for minority participation in FmHA programs, including the limited resource loan program, be established (prior to the program year) and met at the county level;
- -- delegate additional adequately trained staff to monitor minority targets and participation, the quality of services and outreach to minorities, and conduct compliance reviews;
- -- develop specific interpretations of ECOA requirements and establish guidelines for enforcement in FmHA loan programs.

7. Finding

FmHA county committees composed of three members, at least two of whom are farmers, determine the eligibility of FmHA farm loan applicants and the limits of credit to be extended to borrowers. Committee members are nominated by FmHA county supervisors and appointed by FmHA State directors. Between 1979 and 1980 the number of black committee members fell 39.8 percent nationwide, despite an increase in overall committee membership during the same year. The loss of black committee members was especially severe at the State level, where, for example, Tennessee lost 93.3 percent of its black committee members, Georgia -- 60.7 percent, Mississippi -- 56.3 percent, Alabama -- 48.6 percent, and Texas -- 45.5 percent.

Recommendation

The Farmers Home Administrator should ensure that county committees are representative of the population of the county which they serve.

Appendix A

Farm Definitions Used in Censuses of Agriculture

	Acreage Limitations		Other criteria
1900	None	-	agricultural operations requiring continuous services of at least one person
1910	3 or more acres	-	any agricultural operations
1920	less than 3 acres	-	$250 worth of agricultural products produced for home use or sale; or constant services of at least one person
1925	3 or more acres	-	any agricultural operations
1930 1935 1940	less than 3 acres	-	$250 worth of agricultural products produced for home use or sale
1945	3 or more acres	-	agricultural operations consisting of 3 or more acres of cropland or pastureland; or $150 worth of agricultural products produced for home use or sale
	less than 3 acres	-	$250 worth of agricultural products produced for home use or sale
1950 1954	3 or more acres	-	$150 worth of agricultural products produced for home use or sale
	less than 3 acres	-	$150 worth of agricultural products produced for sale
1959 1964	10 or more acres	-	$50 worth of agricultural products produced for sale
1969	less than 10 acres	-	$250 worth of agricultural products produced for sale
1974 1978	None	-	$1,000 or more worth of agricultural products produced for sale

Appendix B

Methodology For Estimating Number of Black and White Farm Operators Excluded by Change in the 1978 Census Definition of a Farm

1. See Appendix A for census farm definitions, by year.

2. Appendix B-1 of the 1978 Census of Agriculture[1] indicates that in 1978, 468,973 operations were excluded by the 1974/78 census definition of a farm that would have been counted under the 1969 census definition. These data are not broken down by race.

3. Table 4 of the 1974 Census of Agriculture[2] indicates that in 1974, 152,110 operations were excluded by the 1974 definition of a farm that would have been counted under the 1969 definition, and that 5.5 percent were operated by "blacks and other races." This racial breakdown can be applied to the 1978 data to provide the best possible estimate of the number of blacks and whites excluded under the 1978 definition. However, first the 1974 data need to be adjusted because of the inclusion of "others" in the data, and for the undercount which occurred in 1974 (see appendix C).

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[1] U.S., Department of Commerce, Bureau of the Census, 1978 Census of Agriculture, vol. 1. pt. 51.

[2] 1974 Census of Agriculture, vol. II, pt. 3, I-7.

4. Adjusting data for inclusion of "others": According to table 4 of the 1974 Census of Agriculture, 8,362 "blacks and others" were excluded by the 1974 definition. Blacks comprised 80.2 percent of the nonwhites with agricultural sales under $1,000 in 1974.[3] Thus, an estimated 6,706 operators excluded by the 1974 definition were black.

5. Undercount of 1974 data: Appendix C-2 of the 1978 Census of Agriculture indicates that the 1974 census undercount for farms with sales under $2,500 was 25.9 percent. This was raised to 30 percent as a low estimate of the rate of "undercount for those with sales under $1,000 (which are the operations effected by the 1974 definition). Thus adjusting for the 30 percent undercount, the number of farms excluded by the 1974 definition (152,110) is adjusted upward by 65,190 (to 217,300).

6. Adjusting 1974 undercount by race: According to census officials, blacks comprised 9 percent of those farm operators who would not have been counted in 1978 if the 1974 census methodology had been used. (See appendix C.) Applying this percentage to the 1974 undercount (as the best possible estimate for 1974), we can estimate that of the 65,190 uncounted operations, 5,867 were black-operated.

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[3] Ibid., p. III-9.

7. Adding 5,867 undercounted blacks to 6,706 counted blacks brings the total number of blacks excluded by the 1974 definition to 12,572.

8. The 12,572 blacks excluded by the 1974 definition are 5.8 percent of the total (217,300) farm operators excluded.

9. Assuming that the ratio of white-operated farms to black-operated farms excluded by the 1974/78 definition remained the same between 1974 and 1978, we can estimate that 5.8 percent of the 468,973 total operations, 27,200 operations, excluded in the 1978 census were black-operated. Adding this number to the total number of black-operated farms counted under the 1978 census (57,271), brings the new total to 84,471 black-operated farms under the 1969 census definition of a farm.

10. The number of nonwhite operated farms excluded by the 1974/78 definition can be determined by dividing the number of black-operated farms by .802 (see point 4 above), which equals 33,915.

11. The number of white-operated farms excluded by the 1974/78 definition can be determined by subtracting the nonwhite farms from the total farms excluded by the definition, which equals 435,058 white-operated farms. Adding this number to the number of white-operated farms excluded in the 1978 census, 2,398,726, brings the new total of white-operated farms to 2,833,784 under the 1969 census definition of a farm.

Appendix C

Methodology for Adjusting Undercount of the 1969 Census

Prior to 1969, the Census of Agriculture was conducted by enumerators going door-to-door. For the 1969 and 1974 censuses, data were collected primarily by a self-enumeration, mailout-mailback procedure. Without the necessary followup, the 1969 and 1974 censuses resulted in serious undercounts. The 1978 Census of Agriculture was improved by adding additional mail lists and by "conducting a complete enumeration of all households in... sample segments in rural areas... Farms enumerated in this sample were matched to the mail list. The sample farms not located on the mail list provided reliable estimates by State of the number and characteristics of the farms not represented in the mail portion of the Census."[1]

The 1969 Census of Agriculture counted 2,626,403 white farm operators.[2] According to census officials,[3] a coverage evaluation conducted for the 1969 census estimated the overall undercount to be about 15 percent. Thus, the number of white farm operators has been adjusted upward to 3,089,885 (see text table 1.1).

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[1] U.S., Department of Commerce, Bureau of the Census, 1978 Census of Agriculture, vol. I, pt. 51, App. C.

[2] 1974 Census of Agriculture, vol. II, pt. 3 p. I-10.

[3] John Blackledge, Branch Chief, Farm Economics, Agricultural Division, U.S. Bureau of the Census, telephone interview, Sept. 15, 1981.

The 1969 Census of Agriculture counted 87,393 black farm operators.[4] The coverage evaluation of the 1969 census was not broken down by race. However, the coverage evaluation of the 1978 census was broken down by race and indicated that black farm operators were undercounted by 34.8 percent. This percentage (though possibly conservative for 1969, since the mailout lists have been improved since then) was used as the best available estimate of the 1969 undercount of black farm operators. Thus, the estimated number of black farm operators in 1969 was adjusted upwards to 133,973 (see text table 1.1).

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4. Ibid., P. I-82.

Appendix D

Black Farm Operators in the United States
(1978)

	Farms with sales of $1,000 or more		Farms with sales of $2,500 or more	
	Farms	Acres in Farms	Farms	Acres in Farms
United States	57,271	4,743,619	23,687	3,282,512
Alabama	4 791	413 354	1 284	218 348
Arizona	92	54 561	51	54 237
Arkansas	2 067	194 969	1 040	153 429
California	388	31 368	196	28 504
Colorado	56	14 035	27	13 262
Connecticut	10	323	4	(D)
Delaware	60	4 378	39	4 007
Florida	2 307	149 780	772	117 300
Georgia	4 485	383 419	1 674	276 644
Idaho	16	9 615	12	9 501
Illinois	169	23 070	126	21 333
Indiana	107	17 838	79	16 884
Iowa	95	23 845	89	23 748
Kansas	139	50 085	103	48 143
Kentucky	1 092	83 155	743	71 442
Louisiana	3 296	225 860	1 080	154 390
Maine	6	3 340	4	(D)
Maryland	953	48 675	610	36 950
Massachusetts	19	836	15	534
Michigan	247	20 377	119	15 755
Minnesota	69	19 913	64	19 539
Mississippi	8 817	677 193	2 204	322 143
Missouri	279	44 998	188	38 796
Montana	8	7 661	7	(D)
Nebraska	74	50 708	63	47 671
Nevada	6	365	1	(D)
New Jersey	104	4 752	54	4 007
New Mexico	12	21 779	3	579
New York	75	10 171	44	7 355
North Carolina	7 680	423 272	4 663	357 348

Appendix D
(continued)

Black Farm Operators in the United States
(1978)

	Farms with sales of of $1,000 or more		a/ Farms with sales of $2,500 or more	
	Farms	Acres in Farms	Farms	Acres in Farms
North Dakota........................	19	16 696	18	(D)
Ohio................................	433	31 086	190	25 143
Oklahoma............................	851	134 144	347	91 500
Oregon..............................	21	2 526	10	1 554
Pennsylvania........................	70	6 926	45	5 634
South Carolina......................	6 451	324 665	2 112	219 765
South Dakota........................	30	35 356	28	(D)
Tennessee...........................	2 405	177 765	1 173	136 674
Texas...............................	5 420	640 411	1 876	392 753
Utah................................	3	385	2	(D)
Vermont.............................	3	(D)	3	(D)
Virginia............................	3 895	331 935	2 420	267 445
Washington..........................	42	9 296	30	8 905
West Virginia.......................	46	6 927	23	4 944
Wisconsin...........................	59	10 806	48	10 013
Wyoming.............................	3	231	3	231
All other states....................	1	(D)	1	(D)

Source: U.S. Department of Commerce, Bureau of the Census, 1978 Census of Agriculture, Vol. 1. pt. 51, Table 42, p. 209.

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